



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, MNDCT, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of personal property - Section 65; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The person named on the application as Tenant NK (the “Tenant”) confirms that as Tenant AM’s Agent and Power of Attorney they intended to be named as a Party. The Parties confirm that their evidence has been exchanged and that no recording devices are being used for the hearing.

Issue(s) to be Decided

Is the Tenant entitled to return of personal property?

Is the Tenant entitled to compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement with two named tenants started on September 22, 2019. The one tenant who is not named in this application is tenant EA. On March 2, 2021 tenant EA was assaulted by Tenant AM. Tenant AM was arrested on the same day and has not been out of jail since. On

or about March 11, 2021 tenant EA passed away. Tenant AM is currently awaiting trial on the matter however there is no expectation that Tenant AM will be released from jail.

The Tenant states that Tenant AM had belongings in the unit at the time of the assault and that the Landlord did not contact Tenant AM to remove their belongings from inside the unit. The Tenant states that Tenant AM's belongings in the unit were thrown out but that the Tenant was able to retrieve other belongings that had been left in the shed.

The Tenant states that they are not making a claim for return of the belongings in the unit as they accept that these items are no longer available. The Tenant confirms that they are only seeking compensation for the loss of the items in the unit. The Tenant does not dispute that the family of tenant EA ended the tenancy in March 2021. The Tenant argues that the Landlord breached the Act or tenancy agreement by not giving the Tenant notice to remove Tenant AM's belongings. The Tenant also argues that that the Landlord had an obligation to verify that any agent acting on behalf of tenant EA was authorized to act for tenant EA. The Tenant argues that the person who removed the belongings in the unit was not authorized to act. The Tenant confirms that no communication has taken place between the Tenant and tenant EA's representatives or family members.

The Landlord states that tenant EA's father informed the Landlord that a person would act on their behalf (the "Agent") to remove the items in the unit and to clean the unit out. The Landlord states that they accepted this as authorization. The Landlord states that the Agent moved all the household items out by March 20, 2021 and that the Agent had "trauma cleaning" arranged and completed by April 23, 2021. The Landlord states that the Agent informed the Landlord that they were ending the tenancy and asked for the pre-authorized rent cheques to end. The Landlord states that the Landlord accepted an end of tenancy for March 30, 2021 and that no further rents were owing.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. There is no dispute that the tenancy ended while Tenant AM was in jail and that the family of the deceased tenant EM through their Agent removed the belongings left in the unit. There is no dispute that the family's Agent could not end the tenancy or that the Landlord could not accept the end of the tenancy. There is no supporting evidence that the father of tenant EM was not authorized to deal with the belongings left in the unit and even if this were the case, it is undisputed that the Landlord did not dispose or remove any of Tenant AM's belongings. There is nothing in the Act that requires the Landlord to take action in relation to a tenant's belongings when a tenancy ends unless they are abandoned by that tenant. For these reasons I find that the Tenant has not substantiated that the Landlord breached the Act or tenancy agreement in relation to the removal of Tenant AM's belongings. I therefore dismiss the claim for compensation. As the Tenant's claims have had no success, I find that the Tenant is not entitled to recovery of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 04, 2022

Residential Tenancy Branch