



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code MNDCT, MNETC, RPP

Introduction

This hearing was convened to hear the Tenant's Application for Dispute Resolution, made on August 1, 2022. The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order granting compensation for monetary loss or other money owed;
- an order granting compensation because the Landlord ended the tenancy and has not complied with the Act or used the rental property for the stated purpose; and
- an order that the Landlord return the Tenant's personal property.

The Tenant attended the hearing and was accompanied by RM and MC, advocates. The Landlord did not attend the hearing. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenant testified the Landlord was served with the Notice of Dispute Resolution Proceeding package by registered mail on August 19, 2022. In support, the Tenant submitted copies of Canada Post registered mail receipts confirming the date and time of purchase and including the tracking number. Pursuant to sections 89 and 90 of the Act, documents served in this manner are deemed to be received five days later. I find these documents are deemed to have been received by the Landlord on August 24, 2022.

In addition, the Tenant testified that an additional documentary evidence package was served on the Landlord by leaving a copy with a female adult at the rental property on September 9, 2022. According to RM, the package was accepted on behalf of the Landlord. A video was submitted in support. I find the additional documentary evidence package was served on and received by the Landlord on September 9, 2022.

The Tenant was given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Severance

The Tenant's monetary claims were discussed during the hearing. The Tenant was advised of Rule of Procedure 2.3, which permits an arbitrator to dismiss unrelated claims with or without leave to reapply. In this case, I find the Tenant's request for an order that the Landlord return the Tenant's personal property is unrelated to the monetary relief sought. With the agreement of the Tenant, I dismiss the Tenant's monetary claims with leave to reapply at the Tenant's discretion.

Issue to be Decided

Is the Tenant entitled to an order that the Landlord return the Tenant's personal property?

Background and Evidence

The Tenant testified that he moved into the rental property on June 28, 2019. Although he shared an entrance with the Landlord, he occupied only the lower portion of the rental property. The Landlord occupied only the upper portion of the rental property. The Tenant testified that he had his own bathroom and a small "kitchen" area which included a hotplate. The Tenant testified that rent was \$1,200.00 per month at the end of the tenancy. The Tenant testified he did not pay a security deposit.

The Tenant testified that he was involved in a workplace accident on June 26, 2022. When he returned home from hospital the same day, the Landlord had changed the locks to the rental property. Another individual occupied the lower portion of the rental property.

The Tenant seeks an order that the Landlord return his personal property. The Tenant testified that he has asked for his belongings to be returned but the Landlord has refused. The Tenant's belongings are listed on a document titled "Statement Regarding Tenancy Dispute (Retained or Damaged Property)", which was submitted into evidence. The Tenant confirmed he has been unable to recover the following items:

- Xbox 360 console
- Xbox 360 games (50)
- King size bed mattress
- Bookshelves (2)
- Clothes rack
- Pantry (3)
- Lamp
- Dish set
- Cooking utensils
- Flatware (2)
- Kitchen knives
- Bible
- Chess board
- Blu-ray movies (12)
- Gotham steel pots and pans set
- Stainless steel thermos
- Television set
- Selection of work clothes
- Plastic collector model vehicles (15)
- DVD's (150)
- Complete DVD box sets (2)
- TV stand
- Pet cart
- Groceries
- Coffee tables (2)
- Walking stick
- Rare collectable plastic car models (2)

The Landlord did not attend the hearing to dispute the Tenant's evidence.

Analysis

Based on the undisputed documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

The living arrangement between the parties is unconventional. However, I am satisfied that a tenancy exists. I accept the Tenant's evidence that the parties lived separate and apart and did not share kitchen or bathroom facilities. Further, Policy Guideline #9 confirms that a presumption of a tenancy exists when a tenant gains exclusive

possession of a rental unit and the tenant pays a fixed amount for rent. I accept both of these conditions existed. In addition, I note that a strict interpretation of section 4 of the Act does not preclude a finding that a tenancy exists merely because the tenant and the landlord share an entrance. Accordingly, based on the undisputed evidence of the Tenant and the authorities referred to above, I find that a tenancy exists and that I do have authority to consider the Tenant's application.

Section 65(1)(e) of the Act confirms the director may order that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned.

In this case, I accept the undisputed evidence that the Landlord locked the Tenant out of the rental property on June 26, 2022. I also accept that the Landlord has not returned the Tenant's personal property or permitted the Tenant to collect his personal property, despite being asked to do so. **I order the Landlord to return the items listed on Page 3 of this decision or to permit the Tenant to collect them from the rental unit, no later than September 30, 2022.**

Conclusion

The Landlord is ordered to return the Tenant's personal property as described above.

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

Dated: September 26, 2022

Residential Tenancy Branch