



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RPP, MNETC, FFT**

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "Act"), made on June 10, 2022. The Tenants applied for an order that the Landlord return the Tenants' personal property, a monetary for compensation relating to a Two Month Notice to End Tenancy for Landlord's Use, and for the return of the filing fee.

The Tenants and the Landlord attended the hearing at the appointed date and time. At the start of the hearing, the Landlord confirmed receipt of the Tenants' Notice of Hearing and documentary evidence. As such, I find these documents were sufficiently served pursuant to Section 71 of the Act. The Landlord confirmed that she has not submitted any documentary evidence in response to the Application.

Preliminary Matters

At the start of the hearing, the Tenants confirmed that they were not seeking the return of their personal property, however, were seeking monetary compensation in relation to missing and damaged items. As such, the Tenants' claim for the return of personal property is dismissed without leave to reapply.

The parties were given an 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 Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a Monetary Order for compensation and loss under the *Act*, regulation, or tenancy agreement and recovery of the filing fee pursuant to sections 51, 67 and 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on May 1, 2019. During the tenancy, rent in the amount of \$2,100.00 was due to the Landlord on the first day of each month. A security deposit in the amount of \$1,050.00 was paid to the Landlord and has since been dealt with in accordance with the *Act*. The tenancy ended on April 1, 2022 in compliance with the Two Month Notice to End Tenancy for Landlord Use of the Property dated February 1, 2022 (the "Two Month Notice").

The Tenants provided a monetary order worksheet which contains six (6) items for which the Tenants are seeking compensation for. The Tenants stated that they were moving out of the rental unit of April 1, 2022. The Tenants stated that they had one last load to collect from the rental unit and intended on cleaning the unit as well. The Tenants stated that once they arrived at the rental unit, the Tenants found the Landlord's associates had entered the rental unit and removed the Tenant's possession, placing some of the items outside in the rain. The Tenants stated they found some items inside the rental unit broken, and others were missing altogether. As such, the Tenants provided quotes for the following;

The Tenants are seeking \$259.00 for a "Royal Chinet dinner set" the Tenants stated that they found the diner set broken in the rental unit. The Tenants provided a quote from an online source to demonstrate the cost associated with replacing their dinner set.

The Tenants are seeking \$998.00 in relation to a missing 55" Sony T.V. Bravia LED. The Tenants stated that their television was missing upon their return to the rental unit.

The Tenants are seeking \$237.00 for a missing 9" steel bedframe. The Tenants are seeking \$249.95 relating to a missing headboard belonging to the Tenants' bed.

The Tenants are seeking \$32.29 for a missing kids vacuum cleaner set. The Tenants provided a quote from an online source to demonstrate the cost of replacing the toy vacuum set.

The Tenants are seeking \$59.00 for medication the Tenants purchased for their children following their health issues relating to mold found in the bathroom of the rental unit. The Tenants provided a picture of the medications purchased for their children and a quote from an online source in support of the cost.

The Tenants provided pictures of the front door of the rental unit which had the lock removed. The Tenants also provided a text message from the Landlords to the Tenants asking when they will be moved out of the rental unit. Lastly, the Tenants provided pictures of the bathroom ceiling in the rental unit which sustained water damage and shows signs of mold.

In response, the Landlord denied that the Tenants left any of their possession in the rental unit. The Landlord stated that the Tenants had some garbage which they left behind. The Landlord stated that they had family friends moving into the rental unit on April 1, 2022 and that the Tenant was meant to be moved out of the rental unit on March 31, 2022. The Landlord denied taking any other Tenants' possession and denied breaking any of their possessions.

The Tenants are also claiming for compensation as the Landlord has not accomplished the stated purpose of the Two Month Notice. The parties agreed that the Landlord served the Two Month Notice to the Tenants as the Landlord sold the rental unit and the purchaser (numbered company listed on the cover page of the decision) intended to occupy the rental unit. During the hearing the Landlord confirmed that the purchaser is her son, who owns the numbered company. The Landlord stated that the purchaser did not receive his financing, therefore, the sale fell through just before the Tenants vacated the rental unit.

The Landlord stated her son (purchaser) did not occupy the rental unit after the sale fell through. Instead, the Landlord stated that family friends moved into the rental unit on April 1, 2022 as the Tenants were moving out of the rental unit. The Landlord stated that her son still intends on purchasing the rental unit once the financing is approved but that as of this date, the rental unit is vacant.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 24(1) of the Residential Tenancy Branch Regulations (the "Regulations");

A landlord may consider that a tenant has abandoned personal property if
(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and

4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

In this case, I find that the Tenants provided insufficient evidence to demonstrate that they had possession of the items that they are claiming for. I find that the Tenants have provided insufficient evidence to demonstrate that the Landlord removed or damaged these items. Furthermore, I find that the Tenants have provided insufficient evidence to demonstrate that they have suffered a loss, and the value of the loss. As such, I dismiss the Tenants' monetary claims for compensation relating to damaged or missing personal possessions without leave to reapply.

With respect to the Tenants' claim for compensation relating to their children's medication, I find that the Tenants have provided insufficient evidence to demonstrate that the medication was required as a result of the mold shown in the bathroom of the rental unit. As such, I dismiss the Tenants' monetary claims relating to the purchase of medications without leave to reapply.

The Tenants are claiming for compensation as the Landlord has not accomplished the stated purpose of the Two Month Notice.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and

(b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

According to the Residential Tenancy Branch Policy Guideline 43;

It is up to the applicant to ensure that a party is properly named so that any order granted is enforceable. The director may be unaware that a party is not properly named and may issue the order using the name set out in the application. Where an individual is not properly named, the director may dismiss the Application for Dispute Resolution with leave to reapply unless the other party is present. In that circumstance, the director may amend the Application for Dispute Resolution.

C. BUSINESSES AS PARTIES To enforce Residential Tenancy Branch orders, the applicant must use the correct legal name of a respondent who is a limited liability company, corporation, or partnership. If the party is a registered corporation or a limited liability company, then the full legal name of the corporation or company should be used on the Application for Dispute Resolution, including designations like Incorporated, Inc., Limited, Ltd., Corporation or Corp. (or the French language equivalents). A sole proprietorship or a business that is not a registered corporation or limited liability company is not considered a legal person. Because of this, these types of businesses should not be listed on their own as a respondent. When a party is doing business as a particular named entity, the Application for Dispute Resolution can name just the

proprietor, or it can name the proprietor and the business name used, for example: "John Smith DBA (or doing business as) Garden Apartments," or "John Smith COBA (or carrying on business as) Garden Apartments." An Application for Dispute Resolution that names a partnership will be enforceable against the partnership. If an applicant is also seeking an order against the individual partners on the basis of the Partnership Act, the individual partners should be named, and each served with a copy of the Application for Dispute Resolution. It is up to the applicant to ensure that a party is properly named so that any order granted is enforceable. The director may be unaware that a party is not properly named and may issue the order using the name set out in the application. Where a business is not properly named, for example, "Garden Apartments" instead of "Garden Apartments Ltd.," the director may dismiss the Application for Dispute Resolution with leave to reapply unless the other party is present. In that circumstance, the director may amend the Application for Dispute Resolution.

In this case, I accept that the parties agreed that the Landlord served the Tenants with the Two Month Notice as the purchaser intends to occupy the rental unit. I find that the Tenants have not named the purchaser as a respondent in the Application. I find that it would have been the numbered company's responsibility to accomplish the stated purpose of the Two Month Notice after instructing the Landlord to serve the Two Month Notice. As such I dismiss the Tenants' claim for compensation under Section 51 of the Act WITH leave to reapply.

As the Tenants were unsuccessful with their Application, I find that they are not entitled to the return of the filing fee.

Conclusion

The Tenant's monetary claims for compensation relating to loss or damage to their possessions are dismissed without leave to reapply.

The Tenants have not named proper respondent relating to the monetary claim under Section 51 of the Act. The Tenants are at liberty to reapply for such compensation.

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: November 17, 2022