



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding DESIRED DESTINATIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RPP, MNDCT, FFT

Introduction

This hearing dealt with a tenant's application for return of personal property and monetary compensation for damages or loss under the Act, regulations, or tenancy agreement.

Both parties appeared and/or were represented at the hearing and the parties were affirmed.

The tenant sent the proceeding package to the landlord's agent via registered mail but the registered mail was returned to sender due to an "incomplete address". The tenant also sent the proceeding package, including evidence, to the landlord's agent via email. The landlord's agent confirmed receiving the email, including attachments, and understood the tenant was seeking compensation of \$15000.00 as claimed. I deemed the landlord sufficiently served under section 71 of the Act.

It was brought to my attention that the landlord originally named in this proceeding is actually the owner's agent and spouse. The owner was called to the hearing and consented to being named in this proceeding, along with the name of her rental business.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Issue(s) to be Decided

1. Is it necessary and appropriate to issue an order for return of the tenant's personal property?
2. Has the tenant established an entitlement to compensation from the landlords, as claimed?

Background and Evidence

In April 2020 the tenant moved into the rental unit under a tenancy agreement between the tenant's employer and the landlord(s). The landlords and the tenant's employer had a tenancy agreement with respect to the rental unit, to be used as staff housing, until the end of October 2020 when that arrangement ended. Starting November 1, 2021, the landlords entered into tenancy agreements directly with the occupants of the house, including the tenant.

Starting November 1, 2020, the tenant was required to pay the landlords rent of \$600.00 for use of a bed in a shared bedroom and shared access to the other common areas of the house.

On January 22, 2021 the tenant was involved in a car accident in another city. In the days that followed, the tenant communicated with the landlord he was unsure if he would be returning to the rental unit. On February 5, 2021 the tenant confirmed to the landlord that he would not be returning to the rental unit.

The tenant claims he left certain items at the rental unit. The tenant provided a list of those items and the landlord responded they did not have any of those items. Accordingly, I did not further consider issuing an order for return of personal property.

The tenant also sought monetary compensation in the event the landlord had disposed of his personal property.

The tenant prepared a detailed breakdown of his \$15000.00 as follows:

<i>Receipt / Estimate From</i>	<i>For</i>	<i>Amount</i>
estimate from shops and online store	clothes and bedclothes	\$ 2950
estimate from shops and online store	suitcase, bag and toys	\$ 945
receipt; estimate from shop or store	basic daily necessities	\$ 623
estimate online	jades and cash	\$ 950
estimate by Google	indirect loss in doc.1-4	\$ 4600
prescription medicine Duloxetine,psy	physical and mental damage	\$ 4932

Tenant's position

The tenant submitted that he had communicated with the landlord about his possessions and he understood the landlord would help his roommate (referred to by initial "G") pack the items and the landlord would store them. Not long after, a housemate "T" brought the tenant's important documents to him. As for the remainder of his possessions, since the landlord indicated he would work with his roommates, the tenant continued to communicate with his roommates until September 2021 or October 2021 when "G" moved out and then with another house mate (referred to by initial "T") who moved out of the house in October 2021. The tenant stated that he knew his housemate could not take his possessions with them so the tenant reached out to the landlord on November 6, 2021 and that's when he learned the landlord had disposed of his personal property.

In summary, the tenant is of the position the landlord breached the Act and its regulations with respect to storing and disposing of his personal property after assuring the tenant he would work with his roommates.

Included in the tenant's evidence are several text messages and emails between the tenant and the landlord and between the tenant and "G" and between the tenant and "T". The tenant also included photographs that appear to show his bed area along with some of his possessions visible in the photographs.

Landlord's position

The landlord's agent testified that the tenant sent him varying messages concerning his possessions. At one point the tenant indicated he would take his things, or his uncle would get his possessions, and at other times the landlord understood the tenant's roommates were taking care his possessions. The landlord understood "G" packed up the tenant's possessions. The housemate "T" moved out of the house on October 31, 2021 and the landlord found "T"s room empty so he though "T" took the tenant's possessions to him. In a common room described as a den the landlord found a pile of abandoned items in the corner. The occupants who were living there at the time said that is where occupants leave the items they no longer want. In this pile of items there was nothing of value. The landlord recalled seeing a broken George Forman grill, cardboard boxes and 3 or 4 shirts. Any items left in the den were subject to being taken by the other occupants of the house. There were no other things left at the house that resembled the items on the tenant's list.

The landlord is of the position the tenant's housemates took responsibility for the tenant's items and when the tenant reached out to him on November 6, 2021 almost a year had gone by and none of the items on the tenants list remained in the house.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation, or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim. In this case, the tenant has the burden of proof.

In this case, it is undisputed the tenancy came to an end unexpectedly after the tenant was involved in a car accident. However, the tenant was able to communicate with the landlord electronically regarding the end of the tenancy and his personal possessions.

It was also undisputed that the tenant had left personal possessions at the rental unit the last time he was at the rental unit before his car accident.

The crux of this dispute surrounds who took care and control of the tenant's possessions between February 2021 and November 2021.

Upon review of the electronic messages between the tenant and "G", "T", the landlord and another occupant of the house referred to by "H", I find the tenant has not satisfied me that he suffered losses in the amount claimed as a result of the landlord's breach of the Act or regulations. I make this finding considering the following factors:

The tenant's text message of February 11, 2021 clearly states that "G" packed up the tenant's possessions; however, the tenant did not call "G" as a witness to testify as to what items he packed for the tenant.

The tenant states to the landlord on February 11, 2021 that the landlord can deliver the tenant's possessions to him anytime; however, I do not see any messages whereby the landlord committed to delivering the tenant's possessions to him. Rather, on February 6, 2021 the landlord offered to "help" the tenant get his possessions back if there was not too much but the tenant responded that "it's a lot" but maybe not that much if the tenant's food is given away. After February 11, 2021 text messages exchanged with the landlord, there is no further communication between the tenant and the landlord until the tenant sends an email of November 6, 2021. On November 6, 2021 the landlord informs the tenant that items left behind by the tenants of the house have been disposed of.

Also of concern is that I heard that "T" delivered important documents to the tenant but the tenant included cash and precious stones on his list of missing items. I find it odd and unlikely that tenant would ask "T" to bring documents but not cash and precious stones if there were any. Therefore, I question whether the tenant had the cash and jade in the rental unit right before he was in the car accident.

On June 5, 2021 the tenant messages "T" to request she bring summer clothes to him when she comes to the city the tenant currently resides. There is no response from "T".

On June 26, 2021 the tenant messages "T" and indicates he needs his summer clothes from the "brown luggage" and asks "T" when "T" will be coming to the city. "T" responds that she will be coming the following week. On July 6, 2021 the tenant exchanges text messages with "T" with respect to the contents of his "brown luggage" and asking "T" to bring a pair of summer shoes to him. On July 8, 2021 it appears the tenant and "T" have a telephone call followed by the tenant giving "T" his current address of residence. Subsequent messages indicate "T" and "T's friend agreed to drop something off to the tenant at 10:00 p.m. that evening. These communications indicate "T" had care and control over the tenant's possessions and accessed them to bring the tenant some of his possessions. However, the tenant did not call "T" as a witness to describe the contents in the brown luggage, what items "T" returned to the tenant in July 2021 and what items remained in the rental unit.

On October 2, 2021 the tenant messages "G". "G" informs the tenant that he had moved out of the house the day before but that the tenant's possessions are still there and "T" is still living in the house for another month.

On October 29, 2021 the tenant messages "T" and notes the end of the month is approaching and asks whether there is room in "T's boyfriend's car to take the tenant's possessions. "T" responds that there is not enough room to which the tenant responds he will ask others. These messages indicate "T" had care and control over the tenant's possessions rather than the landlord. The tenant did not include messages to indicate he asked any other person to bring his possessions to him.

On November 9, 2021 the tenant asks "T" whether the landlord knows that the tenant had asked "T" and "G" to bring his things to him. "T" responds that there was no discussion with the landlord about the tenant's possessions and that the landlord put the tenant's possessions outside but that they were undercover and safe. The tenant did not call "T" as a witness to describe what items she observed outside. The tenant did not call "T" as a witness and I find it is unclear as to what possessions remained at the rental unit when "T's tenancy ended at the end of October 31, 2021.

On November 9, 2021 the tenant contacts another housemate referred to by initial "H". "H" informs the tenant that his possessions had been stored in the living room of the house and that "T" was staying in that room. "H" also states that 8 people were now residing in the rental unit. The tenant subsequently states to "H" that he had been keeping in contact with "G" and "T" about taking his possessions back. The messages with "H" indicate "T" had care and control of the tenant's possessions and the tenant's message indicate "G" and "T" did, but not the landlord.

In the text messages between the tenant and “G” and “T” I do not see any indication as to where the tenant’s items were placed after “G” packed them up. It is evidence from the text messages that “T” was contacted a number of times by the tenant to retrieve items for him so it would appear the tenant’s possessions were with “T”. Although the tenant’s possessions may have also been stored in a common area as described by “H” but if that is the case the items may have been subject to theft by other occupants of the home.

The tenant acknowledged that he dealt with “G” and “T” about his possessions between February 2021 and October 2021, but not the landlord, and I find this is consistent with the landlord’s understanding that the tenant’s housemates were taking care of his items. Also consistent with the landlord’s position is that in the tenant’s email of November 6, 2021 the tenant indicates that he had asked his roommates to bring his possessions to him but they were not able to do so.

In light of all of the above, it appears to me that the tenant entrusted his housemates “G” and “T” to pack up and care for his possessions until they could be retrieved or delivered to the tenant. I find it is unclear that all of the items the tenant has listed in this claim were actually packed and held by “G” and “T” in the absence of direct evidence from “G” and “T”. It is also unclear what all was returned to the tenant by “T” and what was left behind at the rental unit after “T” vacated the rental unit in the absence of evidence from “T”. It appears that “T” was the last person the tenant entrusted to care for his belongings. While a landlord has certain obligations with respect to possessions that are abandoned by a tenant, a landlord may dispose of items that have a value of less than \$500.00 or where the cost to move and store the items exceeds the value of the items. I find the evidence provided to me by the tenant is insufficient to conclude the landlord improperly disposed of items belonging to the tenant, if any. Therefore, I find the tenant failed to meet his burden of proof and his claim against the landlords is dismissed.

Conclusion

The tenant’s claim 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 *Residential Tenancy Act*.

Dated: June 14, 2023

Residential Tenancy Branch