



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC RPP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on February 13, 2024. The Tenant applied for multiple remedies pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing with his witness. The Landlord attended the hearing with his agent. All parties provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding and initial evidence package for file number ending in 2590. I find this was sufficiently served. However, the Tenant stated he never served the Landlord with his second Notice of Dispute Resolution Proceeding package for file number ending in 5346. As such, I hereby dismiss that claim in full, without leave. I dismiss without leave because it is an identical ground to the issues in the application ending in 2590, which we will be addressing today.

The Landlord provided one page of evidence, but failed to serve it to the Tenant. As it has not been served in accordance with the Rule, I find it is not admissible and will not be considered.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

At the outset of the hearing, I confirmed that the Tenant was never served a 2, 4, or 12 Month Notice to End Tenancy, and was only served a 1 Month Notice to End Tenancy

for Cause. As such, I find his application for the following ground is not applicable to his situation:

- I want compensation because my tenancy ended as a result of a two, four, or 12 Month Notice to End Tenancy, and the landlord has not complied with the Act or used the rental unit/site for the stated purpose

This ground is dismissed, in full, without leave.

Issue(s) to be Decided

Is the Tenant entitled to the return of personal property?

Background and Evidence

The parties were repeatedly warned during the hearing to stop disrespecting the hearing process, and to not speak when it is the other person's turn to present. This was very difficult for both sides to comprehend, and led to the call being muted several times to control the conduct of the parties.

The Tenant asserts he was wrongfully evicted and thrown out of his rental unit improperly. The Tenant stated that all of his belongings were packed up and moved into the Landlord's driveway at the end of October 2023. Following this, the Tenant asserts he lost many of his items because he did not have sufficient funds to procure a moving truck. He also asserts many of his items were stolen and rained out. The Tenant provided a photo of his boxed belongings on the driveway, but did not provide any inventory or itemization of what was lost. The Tenant acknowledged getting some of his belongings back, but asserts much was lost due to theft and rain in the days following his eviction. The Tenant's witness confirmed she was there when the bailiffs came, and she asserts it was not done properly. She also asserts that the Landlord stole the Tenant's things and tried to sell them online.

The Landlord and his agent confirmed that they were successful in evicting the Tenant by way of a 1 Month Notice for Cause, and after they obtained a writ of possession from the Supreme Court, they hired a reputable bailiff to come and physically remove the Tenant's belongings on October 27, 2023. The Landlord stated that it was the bailiff who boxed and moved the Tenant's items, and the Landlord denies being in possession of the Tenant's belongings. The Landlord denies taking anything of the Tenant's and further denied that he tried to sell some of the Tenant's belongings. He stated he tried to

do everything legally, and only hired a bailiff after he obtained a writ of possession and after the Tenant had his due process.

Analysis

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

The onus is on the Tenant to prove his claim.

Section 65 of the Act states that an arbitrator may order that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned. Part 5 of the regulations establishes that a landlord has an obligation to store a tenants personal property for not less than 60 days if it has been left on the property for one month and has a market value of \$500.00 or more. If a tenant claims personal property at any time before it is disposed of, the landlord may require the tenant to reimburse the landlord for reasonable costs for removal and storage of the property and satisfy any amounts payable by the tenant to the landlord under the Act or tenancy agreement.

In this case, I note the Tenant only provided one photo of his boxed belongings in the Landlord's driveway. There is no itemization or breakdown of any items that were lost. Further, there is no evidence to support that the Landlord illegally evicted the Tenant. It appears there was a 1 Month Notice for Cause, and after the Landlord obtained a writ of possession from the Supreme Court, he hired a bailiff to remove the Tenant's belongings. The Landlord's agent confirmed that this occurred. I find no evidence to show that the Landlord had, or still has the Tenant's belongings and it appears this was largely handled by a bailiff service.

Ultimately, without further evidence, I find the Tenant has failed to sufficiently prove his claim as there is insufficient evidence proving these items are in the Landlord's possession or are under his control.

For the above reasons, the Tenant's application for an order requiring the Landlord to return the Tenant's personal property under section 65 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenant's application is hereby dismissed, in full, without leave.

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: February 14, 2024

Residential Tenancy Branch