



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNDC, OPT

For the landlords – MND, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and to obtain an Order of Possession of the rental unit. The landlords applied for a Monetary Order for damage to the unit, site or property and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch; however the landlords have provided no evidence that the tenants were served correctly with the landlords' application or Notice of Hearing. Consequently the landlords' application has not been dealt with today and is dismissed with leave to reapply.

The hearing proceeded with the tenants' application only.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order of Possession of the rental unit?

Background and Evidence

The parties agree that this tenancy started on April 03, 2013. Rent was agreed at \$750.00 per month shared between the two tenants.

The tenants testify that they paid rent of \$530.00 on April 03, 2013 and \$150.00 on April 05, 2013. The tenants testify that they informed the landlord that they would get the rest of the rent to them later in the month. The tenants testify that on April 10, 2013 the landlord RG came and told the tenants that if they are going to take so long to pay their rent then they should pack up their stuff and leave the rental unit. The tenants testify that on April 12, 2013 they returned home and found the landlord had removed all the tenants' belongings and left them in boxes outside the rental unit and the landlords had changed the locks to the rental unit.

The tenant KC testifies that they had no vehicle to remove their belongings from the rental unit and they had nowhere to stay. Later the tenants found bed and board at a house for \$25.00 each per night.

The tenant KC testifies that some of their belongings were missing when they looked through them. The tenant RC testifies that he had recently purchased some work clothes to start a job and his work jacket valued at \$100.00 was missing along with steel toecap boots valued at \$150.00. KC testifies that a blanket and some pillows were missing, valued of \$30.00, a set of shaving items valued at \$20.00, some clothing namely six pairs of socks, 10 pairs of underwear, two pairs of pants, two pairs of jeans and 10 tee-shirts were missing valued at \$120.00. KC testifies that there were also 15 movies belonging to a friend with a replacement cost of \$75.00.

The other tenant DM testifies that his Wii games consol, four Wii games and two controllers valued at \$200.00 were missing; \$100.00 worth of food; two televisions sets valued at \$80.00 and some dishes valued at \$40.00. The tenants also seek to recover \$25.00 per day for the bed and board paid at the temporary lodging for 10 days to a total sum of \$250.00 each.

The tenants seek an Order of Possession to enable the tenants to return to live in the rental unit as the tenants testify that no Notice to End Tenancy was served upon them. The landlord had placed a Notice at the rental unit saying that the tenants were no longer welcome and were considered to be squatting in the property. Any attempt to enter these premises will result in the police being called. A copy of this notice has been provided in evidence by the tenants.

The tenants testify that the landlord had filled in and signed the Shelter information form in the tenants name KM and the cheque for the security deposit from Welfare was made out to the landlord on April 16, 2013 but was not paid due to the illegal eviction of the tenants. A copy of the Shelter Information form has been provided in evidence by the tenants.

The landlord RG testifies that the tenants have contradicted their own testimony regarding the payment of rent. The tenants did not pay any rent to the landlords and the landlords receipt shows that KM's rent and security deposit were both still outstanding. RG testifies that the rental unit was advertised for rent and two men came to view the property on April 03, 2013. The landlord RG testifies that as those men were clean cut and appeared to be nice men the landlord agreed to rent to them. The landlord RG testifies that he went away and when he came back on April 10, 2013, his grandfather, the other landlord, told RG that the tenants were not the same two men who had viewed the property. RG testifies that he went to see the men and determined that they were not the same two men. RG testifies that he told the men that the landlords did not know who they were but they kept saying they would pay the landlords rent. RG testifies that he informed these men that they did not want to rent to them but they refused to move out.

The landlord testifies that as these men obtained the unit by fraud the landlord asked two other tenants living at the property to help the landlords' box up the tenants' belongings and remove them from the unit to a covered porch. The landlord RG testifies that they removed one bike with no tire, two small televisions; a coffee maker; a bottle of detergent; a blanket and three pillows; some odd items of clothing; some boxes of dry food; a razor and shaving cream. The landlord disputes the tenants claim that any other items such as work clothes, 10 tee-shirts, steel toecap boots, 15 movies, a Wii games consol, games or controllers or

dishes were at the unit. RG testifies that in the fridge there was one container of juice and the freezer was empty.

RG testifies that when the tenants returned they started to go through their belongings and throw items around, one tenant went to get a vehicle and the tenants took everything except a blanket, the pillows and two television sets. RG testifies that the landlords still have these items in storage for the tenants.

The landlord RG cross examines the tenants and asks why the tenants did not take all their belongings with them. The tenants respond that they had no transportation. The landlord asks the tenants why they could not take their belongings as the place they are staying is less than a block away. The tenant responds that they did not know at that time where they were going to be staying and they have no storage at that place.

The tenants decline to cross examine the landlords.

Analysis

The parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this. With regard to the tenants claim for an Order of Possession for the rental unit; s. 44 of the *Act* states:

44 (1) *A tenancy ends only if one or more of the following applies:*

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [tenant's notice];*
- (ii) section 46 [landlord's notice: non-payment of rent];*
- (iii) section 47 [landlord's notice: cause];*
- (iv) section 48 [landlord's notice: end of employment];*
- (v) section 49 [landlord's notice: landlord's use of property];*

(vi) *section 49.1* [landlord's notice: tenant ceases to qualify];

(vii) *section 50* [tenant may end tenancy early];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

In this matter the landlord testifies that the tenants were not the original tenants who the landlord had rented the unit to and therefore these parties are not tenants but squatters at the rental unit therefore the landlord did not have to serve the tenants with a Notice to End Tenancy. However the landlords have provided no evidence to support this claim that these tenants were not the same men the landlords rented the unit to and the Shelter Information form signed by the landlord is in the name of one of these tenants. Consequently it is my decision that the landlords have not met the burden of proof that the landlords did not have a tenancy with the applicants.

In light of this I find the tenants had entered into a verbal agreement to rent this unit and the landlord illegally evicted the tenants by removing the tenants' belongings and changing the locks to the rental unit on April 12, 2013. Consequently, pursuant to s. 54(2) of the *Act*, I find the tenants are entitled to an Order of Possession of the rental unit as from May 22, 2013.

With regard to the tenants claim for compensation for lost or missing personal belongings; in this matter the tenants have provided a list of belongings they claim were missing after the landlord removed their belongings from the rental unit. The landlord disputes this claim and states that not all of the items listed by the tenants were at the rental unit. The landlord agrees that they removed some of the items claimed by the tenants namely the two

televisions, a blanket and three pillows, some odd clothing and some boxes of dry food and the landlord testifies that he still has the televisions, blanket and pillows in storage for the tenants. When one person's evidence contradicts that of the other then the person making the claim has the burden of proof. The tenants would therefore be required to provide corroborating evidence that the items claimed were at the rental unit other than those items agreed by the landlord.

It is my decision that the tenants have failed to meet the burden of proof that a work jacket, steel toecap boots, 15 movies, a Wii games consol, four Wii games, two controllers, a set of dishes and food to the value of \$100.00 were missing. Therefore the tenants claim for these items is dismissed. However I am prepared to Order the landlords to return the tenants **blanket, pillows and two televisions sets** within two days of receiving this decision. I further find the tenants are entitled to some monetary compensation for the missing clothing and shaving items and some food items. However, as the tenants have provided no receipts for these items I must limit the tenants claim to \$100.00 for the clothing, \$15.00 for the shaving items and \$75.00 for the food to a total amount of **\$190.00**. The tenants may apportion their individual share of this monetary award.

With regard to the tenants claim for money owed or compensation of \$25.00 per day for 10 days for each tenant for bed and board; I find as the tenants had to find an alternative place to stay after the landlords changed the locks to the rental unit the tenants are entitled to some compensation paid for that accommodation. However, as the tenants have not provided any corroborating evidence to show the actual amount paid for this bed and board I must limit the tenants' claim. I find the amount of \$20.00 per day to be a reasonable amount for each tenant for the 10 days claimed. The tenants will therefore receive a Monetary Order to the sum of **\$400.00**.

Conclusion

The landlords' application is dismissed with leave to reapply.

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$590.00**. The order must be served on the Respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the tenants effective from May 22, 2013. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY ORDER the landlords to return the above mentioned property to the tenants within two days of receiving this decision.

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: May 22, 2013

Residential Tenancy Branch

