# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

MNDCT, MNDCL, FFT, FFL

Introduction:

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution in which he applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on June 01, 2018 the Application for Dispute Resolution and the Notice of Hearing, were sent to the Tenant, via registered mail, at the service address noted on the Application. The Landlord cited a tracking number that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act);* however the Tenant did not appear at the hearing. As the aforementioned documents have been served to the Tenant, the hearing proceeded in his absence.

The Tenant filed an Application for Dispute Resolution in which he applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution. The Landlord stated that he received the Tenant's Application for Dispute Resolution but the Tenant did not serve him with any evidence.

On December 14, 2017 the Landlord submitted 4 pages of evidence to the Residential Tenancy Branch, in response to the Tenant's Application for Dispute Resolution. The Landlord stated that this evidence was served to the Tenant, via regular mail, on, or about, December 08, 2017. In the absence of evidence to the contrary I find that these

documents were mailed to the Tenant and they were accepted as evidence for these proceedings.

On June 01, 2018 the Landlord submitted 78 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via regular mail, on June 01, 2018. In the absence of evidence to the contrary I find that these documents were mailed to the Tenant and they were accepted as evidence for these proceedings.

On June 14, 2018 the Landlord submitted 9 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via regular mail, on June 14, 2018. In the absence of evidence to the contrary I find that these documents were mailed to the Tenant and they were accepted as evidence for these proceedings.

Preliminary Matter

The teleconference hearing was scheduled for 1:00 p.m. on July 03, 2018. The Landlord appeared at the scheduled start time but by the time the teleconference was terminated at 1:34 pm., the Tenant had not appeared.

I find that the Tenant failed to diligently pursue his Application for Dispute Resolution and I therefore dismiss the Tenant's Application, without leave to reapply.

Issue(s) to be Decided:

Is the Landlord entitled to compensation for cleaning the rental unit, changing the lock, and storing the Tenant's personal belongings?

Background and Evidence:

The Landlord stated that the tenancy began on April 22, 2017 and that the Tenant agreed to pay rent of $1,500.00 by the first day of each month.

The Landlord is seeking $2.00 for copying a key. In support of this claim the Landlord stated that:

- on August 30, 2017 the Tenant turned off to power to the residential complex;
- the loss of power impacted the Landlord's ability to use electricity in his suite and it impacted another tenant's ability to use electricity in that person's suite;

- the electrical panel is located in the rental unit;
- when he went to the unit to investigate the problem with the power, the Tenant was not home;
- he deemed the situation to be an emergency so he attempted to enter the rental unit for the purposes of investigating the problem with the power;
- he was unable to do so because the Tenant had changed the lock to the rental unit;
- he had not given the Tenant permission to change the lock;
- he broke the lock and was able to restore power to the residential complex;
- on August 30, 2017 he installed a new lock on the rental unit; and
- he paid $2.00 to copy a key for the newly installed lock.

The Landlord is seeking compensation of $2,500.00 for moving and storing the Tenant's personal property. In support of this claim the Landlord stated that:

- there was a hearing on July 05, 2017 in response to an Application for Dispute Resolution filed by the Landlord;
- the Tenant did not attend this hearing;
- after that hearing the Landlord was granted an Order of Possession for the rental unit and a monetary Order;
- the Tenant filed an Application for Review Consideration and the Arbitrator considering that application granted a review hearing;
- a review hearing was convened on September 08, 2017;
- the Tenant attended this hearing but exited the teleconference shortly after the hearing commenced;
- the Arbitrator at the review hearing upheld the Order of Possession that had been granted on July 06, 2017;
- he posted the Order of Possession and the review decision on the door of the rental unit on September 08, 2017;
- the Tenant came to the rental unit on September 14, 2017, in the company of police officers, at which time he located the documents the Landlord had posted on September 08, 2017;
- when the Tenant came to the rental unit on September 14, 2017 he wanted to recover his personal property;
- he would not provide him with access to the rental unit on September 14, 2017, in part, because he did not believe he only had a small suitcase with him and he did not believe he would be removing all of his property;

- he would not provide him with access to the rental unit on September 14, 2017, in part, because he understood he had the right to recover storage costs before releasing the Tenant's property;
- the Landlord did not serve the Tenant with a Writ of Possession;
- he concluded that the rental unit had been abandoned on August 30, 2017 after he discovered the power had been shut off;
- when he went to the rental unit on August 30, 2017 the Tenant's personal property was in the rental unit;
- his personal property included clothing, two televisions, and a computer;
- the value of the property left behind is approximately $1,000.00;
- when he went to the rental unit on August 30, 2017 the Tenant's dog was not in the rental unit;
- he did not communicate with the Tenant after August 30, 2017 until the hearing on September 08, 2017;
- the Tenant is under court order not to attend the area of the rental unit;
- on, or about, October 01, 2017 the Landlord packed the Tenant's personal items that were in the rental unit; and
- the Landlord is currently storing them in various locations on the residential property.

The Landlord is seeking compensation of $180.00 for cleaning the rental unit. In support of this claim the Landlord stated that:

- the rental unit was very dirty at the end of the tenancy;
- he reduced the new occupant's rent by $100.00 on one occasion in compensation for cleaning areas of the rental unit; and
- he paid a third party $80.00 to clean other areas in the rental unit.

The Landlord is seeking compensation of $220.00 for transcribing court documents that the Landlord submitted as evidence for these proceedings.

Analysis:

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 29(1)(e) of the *Act* authorizes landlords to take possession of a rental unit after it is abandoned by a tenant.

Section 34(1)(a) of the *Act* stipulates that a landlord may consider that a tenant has abandoned personal property if the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended. As the Tenant had filed an Application for Review Consideration after the Landlord was granted the Order of Possession, dated July 06, 2018, a review hearing was scheduled for September 08, 2017, and the Tenant attended the hearing on September 08, 2017, I find it was not reasonable for the Landlord to conclude that the rental unit had been abandoned or vacated by September 14, 2017. I find the Tenant's actions clearly indicated that he was pursuing legal means to continue the tenancy.

Section 34(1)(b) of the *Act* stipulates that a landlord may consider that a tenant has abandoned personal property if , subject to subsection (2), the tenant leaves the personal property on residential property 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 from which the tenant has removed substantially all of his or her personal property.

Section 34(2) of the *Act* stipulates that a landlord is entitled to consider the circumstances described in section 34(1)(b) of the *Act* as abandonment only if

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

As there is no evidence that the landlord received oral or written notice of the tenant's intention not to return to the residential property, I find that the Landlord did not have the right to treat the Tenant's property as abandoned on September 14, 2017, pursuant to section 34(2)(a) of the *Act.*

I find that the Landlord did not have the right, on September 14, 2017, to treat the Tenant's property as abandoned, pursuant to section 34(2)(b) of the *Act,* for the following reasons:

- the Tenant's continued attempts to retain possession of the rental unit suggest a continued interest in the rental unit and, by default, his property within the unit;
- the court order that prohibits the Tenant from attending the rental unit, which explains any extended absence from the unit;
- the estimated value of the personal property left in the rental unit is greater than

the value of property typically left behind by tenants; and
- the Tenant came to the rental unit on September 14, 2017, in the company of police officers, for the purpose of recovering his personal property, which clearly demonstrates a continued interest in his property.

Section 24(3) of the *Act* authorizes a landlord to remove personal property from a rental unit if the property is abandoned in accordance with sections 24(1) or 24(2) of the *Act.* As the Landlord did not have the right to treat the Tenant's property as abandoned on September 14, 2017, I find that he did not have the right to remove his personal property on, or before, September 14, 2017.

Section 26(1) of the *Act* stipulates that if a tenant claims his or her personal property at any time before it is disposed of the landlord may, before returning the property, require the tenant to
(a) reimburse the landlord for his or her reasonable costs of
(i) removing and storing the property, and
(ii) a search required to comply with section 27 *[notice of disposition]*, and
(b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.

As the Landlord had not removed any of the Tenant's personal property by September 14, 2017 and had not, therefore, incurred any moving or storage costs by that date, I find that he did not have the right to demand reimbursement of such costs before returning the Tenant's personal property on September 14, 2017.

Section 30(1)(a) of the *Act* stipulates that a landlord must not unreasonably restrict a tenant's access to the residential property. As the Tenant attended the rental unit on September 14, 2017 for the purposes of removing his personal property; at that point the Landlord did not have the right to remove the Tenant's personal property; and the Landlord had not yet incurred any moving or storage costs, I find that the Landlord unreasonably restricted the Tenant's access to the rental unit on September 14, 2017. I therefore find that the Landlord breached section 30(1)(a) of the *Act* when he prevented the Tenant from removing his personal property on September 14, 2017.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss.

On the basis of the undisputed evidence I find that the Landlord packed and stored the Tenant's personal belongings on, or about, October 01, 2017. Even if I found that it was reasonable for the Landlord to conclude that the Tenant had abandoned his property by October 01, 2017, I find that the Landlord did not take reasonable steps to mitigate the losses he incurred as a result of packing and storing the property. I find that it is entirely possible that the Tenant would have removed his personal property from the unit on September 14, 2017 if the Landlord had provided him with access to the unit on that date, in which case the Landlord would not have incurred any packing or storage costs. As the Landlord did not properly mitigate any losses associated to packing and storage, I dismiss the Landlord's claim for such costs.

On the basis of the undisputed evidence I find that the rental unit required cleaning at the end of the tenancy. I find that the Landlord did not take reasonable steps to mitigate the costs associated to cleaning the rental unit. I find that it is entirely possible that the Tenant would have cleaned the unit on September 14, 2017 if the Landlord had provided him with access to the unit on that date, in which case the Landlord would not have incurred any cleaning costs. As the Landlord did not properly mitigate any losses associated to packing and storage, I dismiss the Landlord's claim for such costs.

On the basis of the undisputed evidence I find that the power to the residential complex had been shut off, which I find to be an emergency, given that the loss of power impacted other occupants of the residential complex and power is generally understood to be essential for daily living activities. I therefore find that the Landlord had the right to enter the rental unit on August 30, 2017, pursuant to section 29(1)(f) of the *Act*, for the purposes of restoring electrical service.

Section 31(3) of the *Act* stipulates that a tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

On the basis of the undisputed evidence I find that the Tenant changed the lock to the rental unit without permission from the Landlord. As there is no evidence that the Tenant had lawful authority to change the lock to the rental unit, I find that he breached section 31(3) of the *Act*.

In addition to establishing that a landlord suffered a loss as a result of the tenant breaching the *Act,* a landlord must also accurately establish the cost of the loss whenever compensation is being claimed. I find that the Landlord failed to establish the true cost of copying a key. In reaching this conclusion I was strongly influenced by the

absence of any documentary evidence that corroborates the Landlord's statement that it cost $2.00 to copy the key. When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts. As the Landlord has not submitted a receipt for the key, I dismiss his claim for copying a key.

With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. Parties are responsible for the cost of collecting and serving any evidence they wish to rely upon at a hearing. I therefore dismiss the Landlord's claim for transcription costs, as they are costs which are not denominated, or named, by the *Act.*

I find that the Landlord has failed to establish the merit of his Application for Dispute Resolution and I dismiss his application to recover the fee for filing an Application.

Conclusion:

The Landlord's Application for Dispute Resolution is dismissed, without leave to reapply.

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: July 04, 2018

Residential Tenancy Branch