



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, MNDCT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order requiring the landlords to return the tenants' personal property, pursuant to section 65; and
- a monetary order of \$7,000.00 for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67.

The two landlords, male landlord ("landlord") and "female landlord," and the two tenants, male tenant ("tenant") and "female tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 29 minutes.

The female landlord and the female tenant did not testify at this hearing.

The landlord confirmed the names and spelling for him and the female landlord. He said that the female landlord is his wife and he had permission to speak on her behalf. He stated that he previously owned the rental unit during this tenancy and confirmed the rental unit address. He provided his mailing address for me to send this decision to both landlords after the hearing.

The tenant confirmed the names and spelling for him and the female tenant. He said that the female tenant is his wife and he had permission to speak on her behalf. He provided an email address for me to send this decision to both tenants after the hearing.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure*. The landlord affirmed, under oath, that neither he, nor the female landlord, would record this hearing. The tenant affirmed, under oath, that neither he, nor the female tenant, would record this hearing.

At the outset of this hearing, I explained the hearing process to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

The landlord confirmed receipt of the tenants’ application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenants’ application.

The landlords did not submit any documentary evidence for this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants’ application to add the name of the two landlords as landlord-respondent parties and to add a monetary claim of \$7,000.00. The tenants included the names of the two landlords in the contact information but not in the party sections for this application. The landlord confirmed that he previously owned the rental unit and had a tenancy with the tenants. The tenants included in their application, a description of personal property of \$7,000.00 in lost cash. The landlords received a copy of the tenants’ application and had notice of same. Therefore, I find no prejudice to either party in making these amendments.

Issues to be Decided

Are the tenants entitled to an order requiring the landlords to return the tenants’ personal property?

Are the tenants entitled to a monetary order of \$7,000.00 for compensation under the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

While I have turned my mind to the tenants’ documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenants’ claims and my findings are set out below.

The tenants seek a monetary order of \$7,000.00 and a return of their personal property including a gold chain, a pair of earrings, and two gold rings.

Both parties agreed that this tenancy began on July 14, 2020 and ended on October 15, 2020.

The tenant testified regarding the following facts. The tenants moved out of the rental unit on October 15, 2020. The tenants were not allowed back into the rental unit until October 25, 2020, and the police had to accompany them, so that the tenants could remove their items and pack up their stuff. The police told the tenants that they did not pack up the tenants' items for them. The tenants do not know whether the landlords took their items or packed up their stuff but think that they did because they are responsible for the rental unit. There was a "homeless lady," whose husband beat her and kicked her out, so the tenants allowed her to stay at the rental unit. This lady stayed at the rental unit until December 2020, after the tenants vacated the rental unit in October 2020. The tenants do not know whether this lady took their items or not but do not want to blame her. The tenants think that the landlords took their items because the landlord is lying, the landlord had a girlfriend there, and the landlords are responsible for the rental property. The landlords packed up the tenants' items since no one else would be allowed to do it. The tenants found this rental unit through their friend S, who they paid rent to, and he gave the rent to the landlords. The tenants have documents to support this application but did not submit it prior to this hearing because it was their "mistake." The tenants can submit these documents after the hearing.

The landlord testified regarding the following facts. The landlord sold the rental unit in December 2020 and the new owners took possession in January 2021. The tenants allowed "another girl" to live at the rental unit and she stayed there until December 2020, after the tenants moved out. The police or the other girl packed up the tenants' items from the rental unit. The landlord did not pack up the tenants' items or take any of their items or cash. The police did not allow the landlords into the rental unit. The landlords did not return to the rental property after they sold it.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' entire application for \$7,000.00 and for a return of personal property, without leave to reapply. I find that the tenants failed all four parts of the above test.

I find that the tenants do not have sufficient documentary, witness, or testimonial evidence that the landlords took their jewelry or cash that the tenants claim they left behind at the rental unit.

The tenants only provided two photograph screenshots of hydro and gas payments that they claim they made for this tenancy. This is irrelevant to the tenants' claims for missing items and monetary compensation.

The tenants agreed that they vacated the rental unit on October 15, 2020, and they were not allowed back into the rental unit until October 25, 2021, with the police. The tenants did not indicate whether they secured their items at the rental unit when they were not present or whether they purchased tenants' insurance for these items. It is undisputed that the tenants allowed a homeless woman to stay at the rental unit, and she remained there until December 2020, after the tenants moved out. I find that the tenants do not have direct knowledge of who may have taken their alleged missing items, if at all. The tenants said that they did not see the landlords pack up or take their items. The tenants stated that they did not know whether the homeless woman packed up or took their items.

The tenants waited almost one year from October 15, 2020, until they filed this application on October 12, 2021, to request their missing items from the landlords. This is despite the fact that they said the police told them to claim for it at the RTB on October 25, 2020.

The tenants did not produce a police report or other documentary evidence to show that they spoke to the police, that the police attended at the rental unit with the tenants, that

any criminal charges were filed against the landlords or anyone else, or that any investigation was conducted by the police for theft or missing items.

The tenants failed to provide receipts, invoices, estimates, photographs, or other documentation to demonstrate that they owned the jewelry items or cash, that they left those items at the rental unit, or the value of the jewelry that they claim was taken. They did not testify about same at this hearing, despite being given multiple opportunities to do so.

The tenant claimed that he had documents to support this application, that he could submit after this hearing. I informed him that the tenants had ample and sufficient time to submit documents prior to this hearing. The tenants were advised by police to file this claim in October 2020, the tenants filed this application in October 2021, and this hearing occurred on February 24, 2022.

Conclusion

The tenants' entire application 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: February 24, 2022

Residential Tenancy Branch