

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0012-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:08 am on 01 April 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as [REDACTED], participated in the hearing.
3. The respondent, [REDACTED] hereinafter referred to as [REDACTED] was also in attendance.

Issues before the Tribunal

4. [REDACTED] is seeking the following:
 - An order for a payment of \$4922.00 in compensation for inconvenience;
 - An order for a return of missing possessions valued at \$19,844.13; and
 - An order for a refund of a \$540.00 security deposit.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case are sections 10 and 33 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

7. [REDACTED] called the following witnesses:
 - [REDACTED] – [REDACTED] daughter

8. [REDACTED] called the following witnesses:
• [REDACTED] – [REDACTED] mother

Issue 1: Missing Possessions - \$19,844.13

Issue 2: Compensation for Inconvenience - \$4922.00

Issue 3: Refund of Security Deposit - \$540.00

Relevant Submissions

[REDACTED] Position

9. With his application, [REDACTED] submitted a hand-written note [REDACTED] #1) in which he states that he will be renting an apartment from [REDACTED] commencing 01 August 2019. In that note it states that [REDACTED] is required to pay a security deposit of \$540.00 and it is also indicated that the monthly rent is set at \$725.00. That note was signed by [REDACTED] on 12 June 2019.

10. [REDACTED] testified that he had paid [REDACTED] the \$540.00 security deposit sometime after he had moved in. That payment was made in cash and no receipt was issued. He also claimed that he paid [REDACTED] \$725.00 for rent each month, in cash, but no receipts were issued for those payments either. He stated that he would typically leave the cash on the fireplace for [REDACTED] to collect.

11. [REDACTED] stated that on 05 March 2020, [REDACTED] locked him out of his unit and he had to find a new place to reside.

12. [REDACTED] stated that all of his possessions were in the rental unit or in the shed when he was locked out of the apartment. He stated that his daughter, [REDACTED], returned to the property on one occasion to retrieve some of his possessions and in May 2020, movers were hired to collect his remaining items. He complained, though, that most of his possessions were not returned to him and were still in [REDACTED] possession.

13. With his application, [REDACTED] supplied 2 lists ([REDACTED] #2, #3) itemizing his belongings which were still in RM's possession. [REDACTED] calculates that the combined value of his missing possessions comes to \$24,766.13. These lists include 3 beds, 3 sofas, a washer and dryer, a table, televisions, an air conditioner, IDs, Christmas decorations, dentures, and numerous other miscellaneous items.

[REDACTED] Position

14. [REDACTED] denied that he had entered into any rental agreement with [REDACTED]. He testified that he had purchased this house at the end of June 2019 and about a week later his mother, [REDACTED], moved into the downstairs in-law suite, with [REDACTED], with whom she was in a relationship at the time. [REDACTED] testified that his mother was the actual

tenant, and that she was paying him \$500.00 per month for rent and an additional \$100.00 for oil.

15. [REDACTED] acknowledged that he had signed the note submitted by [REDACTED] but he pointed out that when he had signed it, there was nothing on that note indicating that rent was set at \$725.00 and he figured it was written in later. [REDACTED] claimed that the only reason he had signed that note was because [REDACTED] informed him that he needed some sort of proof of residence in order to continue to receive his income support. [REDACTED] stated that [REDACTED] never did pay him any rent while he lived with his mother and he stated that no security deposit was paid either.
16. [REDACTED] witness, [REDACTED], corroborated his claims. She testified that she had been in a relationship with [REDACTED] since 2003 and that they had resided in several different apartments prior to moving into her son's in-law suite. She stated that when she moved in with her son, she had an agreement with him that she would pay \$500.00 per month in rent and \$100.00 per month for furnace oil. She testified that [REDACTED] never did pay any rent to [REDACTED] during this tenancy and that he also had not paid any security deposit.
17. [REDACTED] stated that on 08 March 2020, after they had been in several fights, she ended her relationship with [REDACTED]. He spent the next couple of days sleeping in the shed. On 10 March 2020, their fighting continued and the police were twice called to the unit. [REDACTED] stated that she was fearful of [REDACTED] and she did not want him coming into their apartment anymore and she therefore requested that [REDACTED] change the code on the lock to the apartment.
18. [REDACTED] stated that shortly after, [REDACTED] placed a telephone call to his doctor and informed her that he had drunk kerosene. The police were called, as well as an ambulance, and [REDACTED] was forcibly removed from the apartment and taken to a hospital to be assessed. Later that same night, [REDACTED], and [REDACTED]'s daughter, [REDACTED] returned to the property to collect some of his possessions and [REDACTED] was then taken to a shelter. [REDACTED] stated that [REDACTED] has never returned to the rental unit since then and he has not contacted him at any point requesting that any of his possessions be returned to him.
19. [REDACTED] stated that he had been in contact with [REDACTED] over the next few weeks to make arrangements for her to remove any items from the unit that belonged to [REDACTED]. He testified that she visited the unit 4 or 5 times to remove his items and he stated that he had also delivered some items belonging to [REDACTED] home, including a couch. [REDACTED] corroborated RM's claim that [REDACTED] had been to the unit several times to collect [REDACTED]'s belongings and she also testified that [REDACTED] has brought [REDACTED]'s couch to [REDACTED]
20. [REDACTED] testified that on 04 May 2020, [REDACTED] caseworkers made arrangements with [REDACTED] to have the remainder of [REDACTED] items removed from the property. He also stated that he received permission from [REDACTED] caseworkers to dispose of the marijuana plants that [REDACTED] had been growing in the shed.

21. [REDACTED] stated that there is now nothing in his house or shed which belongs to [REDACTED] as it has all been returned to him. He also claimed that some of the items on [REDACTED] list were never at his house. He pointed out, for instance, that his mother was residing in a small in-law suite, and there was just no room in that suite for 3 beds and 3 sofas.
22. [REDACTED] also stated that some of the items on [REDACTED] list don't belong to him, but actually belong to her or were jointly purchased by them during their 8-year relationship.

Analysis

23. I was not persuaded that there existed a landlord-tenant relationship between [REDACTED] and [REDACTED], as such a relationship only exists when there is an agreement such that one party may use and occupy residential premises in exchange for rent. [REDACTED] denied that he had entered into such an agreement with [REDACTED] and he testified that [REDACTED] had never paid him any rent during the time that he lived at the unit. That testimony was corroborated by [REDACTED]. I was also not persuaded that the note ([REDACTED] #1) submitted by [REDACTED] establishes that there was a rental agreement between them. [REDACTED] admitted at the hearing that only after it was signed by [REDACTED] did he write on it that he would be paying \$725.00 in rent.
24. Based on the corroborated testimony of [REDACTED], and on the fact that [REDACTED] presented no evidence at the hearing, e.g., receipts, bank records, I find that [REDACTED] had not paid him any rent during the time he resided in that apartment.
25. As [REDACTED] paid no rent to [REDACTED] and as there was no agreement that he would pay rent, it seems more probable to me that [REDACTED] was not [REDACTED]'s tenant and that he was merely an occupant at the property, cohabitating with [REDACTED]. If that is the case, that is, if it is the case there is no landlord-tenant relationship between [REDACTED] and [REDACTED] then the matters that [REDACTED] wants addressed through his application fall outside the jurisdiction of this Tribunal.
26. But even if I am wrong about that, if [REDACTED] is in fact [REDACTED] tenant or a co-tenant with [REDACTED], I am still not persuaded that the [REDACTED] is entitled to any compensation.
27. Let's start with the security deposit. No evidence (e.g., receipts, bank records) was presented to establish that any deposit was paid to [REDACTED]. [REDACTED] denied that he had received a deposit and that testimony was corroborated by [REDACTED]. As [REDACTED] has the burden of proving, on the balance of probabilities, that such a deposit was paid, I have to conclude, based on the preponderance of evidence, that he failed to meet that burden.
28. Regarding [REDACTED] claim for compensation for his missing personal possessions, I also conclude that this claim fails. Section 33 of the *Residential Tenancies Act, 2018* states:

Seizure of property

33. A landlord shall not take a tenant's personal property to compensate for a contravention of an obligation by the tenant, including a failure to pay rent.

and section 47.(1)(f) states:

Order of director

47. (1) After hearing an application the director may make an order

...

(f) directing a landlord to deliver to a tenant possession of personal property taken in contravention of this Act or the rental agreement or to compensate a tenant for the value of the personal property taken;

29. But no evidence was presented at the hearing to establish that [REDACTED] had "taken" or "seized" the tenant's personal property. Granted, the locks were changed at the unit on 10 March 2020, but from what I heard at the hearing, this was only done after [REDACTED] and [REDACTED] had decided to end their relationship and after [REDACTED] had decided to move out. The text-messages submitted by [REDACTED] seem to corroborate that view ([REDACTED] #1, #2). Furthermore, those locks were only changed by [REDACTED] at the request of his tenant, [REDACTED]. But changing locks at a rental unit, when you have the consent of your tenant, does not run afoul of the *Residential Tenancies Act, 2018*.
30. In any case, [REDACTED] presented no evidence to establish that [REDACTED] was preventing him from returning to the apartment to retrieve what belonged to him. [REDACTED] testified that [REDACTED] had not contacted him at all after he had moved out requesting that he return any possessions to him, and according to [REDACTED] and [REDACTED], they permitted [REDACTED] to come to the property to collect [REDACTED] belongings on numerous occasions. The text-message exchanges submitted by [REDACTED] show that he was cooperating with [REDACTED] in collecting those belongings. I also note on review of the text-message exchanges that [REDACTED] was even pleading with [REDACTED], on a couple of occasions, to collect [REDACTED]'s possessions.
31. At the hearing, [REDACTED] denied [REDACTED] corroborated testimony that he had delivered [REDACTED] sofa to her property, but I did not find that denial credible. [REDACTED] was asked twice at the hearing whether the sofa was delivered to her and she was reluctant to answer both times. And the second time she denied that [REDACTED] had delivered the sofa to her, she began to cry. She did not exhibit that sort of behaviour when asked any other questions.
32. I also find that RM had also cooperated with [REDACTED] caseworkers in allowing the mover they had hired to come to the unit and collect the remaining items that [REDACTED] had failed remove between 10 March and 04 May 2020.

33. Based on the foregoing, I conclude that [REDACTED] had not taken or seized [REDACTED] possessions. He cooperated with and allowed [REDACTED] to return to the property when she wished to collect [REDACTED] items, he delivered some of [REDACTED]'s items to [REDACTED] himself, and he allowed the movers to collect his remaining possessions in May 2020 at the request of [REDACTED]'s caseworkers, 2 months after [REDACTED] had moved out.
34. As there was no evidence of a seizure of [REDACTED]'s possessions, [REDACTED] has not committed any violation of the *Residential Tenancies Act, 2018*. As such, the tenant's claim for compensation for any missing items does not succeed.
35. A final point. [REDACTED] and [REDACTED] were residing together, and [REDACTED] still has possession of the rental unit and any possessions contained therein. If there are possessions that belong to [REDACTED] still at that unit, they are with [REDACTED], not [REDACTED]. And if there is a dispute between [REDACTED] and [REDACTED] as to the ownership of a particular appliance or item of furniture, that is not a dispute that can be resolved at the Residential Tenancies Board, as [REDACTED] and [REDACTED] were not in a landlord-tenant relationship.

Decision

36. The tenant's claim for refund of a security deposit does not succeed.
37. The tenant's claim for compensation for missing possessions does not succeed.
38. The tenant's claim for compensation for inconvenience does not succeed.

10 September 2021

Date

