

Residential Tenancies Tribunal

Application 2022-0730-NL

Decision 22-0730-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:13 p.m. on 15-November-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1 and landlord2” attended by teleconference.

Preliminary Matters

4. Both parties were served notification of today’s hearing by prepaid registered mail by our office on 06-October-2022. Both acknowledge service and are present.
5. The tenant requested to amend his claim for possessions returned from \$15,360.00 to \$200,000.00.
6. These parties had a previous application the landlord was awarded an order of possession (2022-0296-NL) and subsequently provided an authorization to dispose of the tenant’s property (2022-057).

Issues before the Tribunal

7. The tenant is seeking
 - Possessions returned \$200,000.00

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 32. Abandonment of personal properties, Section 43 Refusal or dismissal of application.

Issue 2: Possessions returned \$200,000.00

Tenant's Position

10. The tenant said that they had a verbal agreement and that he moved in April 2022. He is unsure of when he moved out. He said his rent is \$900.00 and that the landlord increased his rent to this amount. He said that he had paid a security deposit of \$200.00.
11. The tenant provided two lists of missing items (TT#01 & TT#02). The tenant only discussed that his bed was missing and that the landlord said there were bed bugs. The tenant said that he doesn't have bed bugs.
12. The tenant said he didn't have receipts, or pictures of the missing items. The tenant didn't discuss any item besides the bed.
13. The tenant said he hired a truck company to pick up the belongings. He didn't know which month he did this. He didn't have proof (receipt) that he hired the company.
14. The tenant was fixated on that he was going to bring the matter to Supreme Court and that he was taping the hearing.

Landlords' Position

15. Landlord1 disputes the terms of the rental agreement stated by the tenant. He said that they did have a verbal agreement but the tenant moved in January 2020 and that he initially paid \$900.00 a month rent, however, the tenant had some health issues, so the rent was reduced to \$800.00. He said that the tenant moved out the 13-April-2022. He was awarded an Order of Possession (2022-0296-NL) that was enforced by the Sheriff's department on that date.
16. Landlord1 said that they followed the guidelines and stored the tenant's belongings for the 30 days. He said that the tenant's worker [REDACTED] came and took some of the belongings. He said that [REDACTED] told him the tenant didn't want the rest. He said that [REDACTED] had also told them that there was a truck hired to move everything, however, no one contacted them from a truck company and the belongings were not moved.
17. Landlord1 said that they applied to the Director for permission to dispose of the belongings (2022-057) and received the permission on 12-May-2022. Nonetheless, they still hung on to the belongings for six more weeks. No one ever came to collect the belongings, so at that point, they disposed of them.
18. Landlord1 said that this has been incredibly stressful for him and his wife. He doesn't understand how he could be given permission from this tribunal to dispose of belongings and then another hearing is set to have him return the possessions he disposed of.

Analysis

19. Section 32 of the Residential Tenancies Act, 2018 states:

Abandoned personal property

32. (1) Where a tenant abandons or vacates a residential premises and leaves personal property on the residential premises, the landlord shall either

- (a) remove the personal property and immediately place it in safe storage; or**
- (b) store the personal property on the residential premises in a safe manner.**

(2) The personal property stored under subsection (1) shall be stored for not less than 30 days unless the tenant takes possession of the personal property before the 30 days have elapsed.

(3) A landlord who stores a tenant's personal property under subsection (1) shall, at the earliest reasonable opportunity,

- (a) provide the director with an inventory of the property; and**
- (b) provide the tenant with a copy of the inventory, if the landlord can locate the tenant.**

(4) The director may, on application by the landlord under section 42, authorize the landlord to dispose of personal property referred to in subsection (1) where the director believes on reasonable grounds that

- (a) the personal property has no monetary value;**
- (b) the cost of removing, storing or selling the personal property would be more than the proceeds of the sale; or**
- (c) the storage of the personal property would be unsanitary or unsafe.**

(5) This section does not apply where a landlord and a tenant have made an agreement in writing with respect to the storage of the tenant's personal property.

(6) The tenant or owner of the personal property may, within the 30 day period referred to in subsection (2), claim and take possession of the personal property by paying the landlord the costs reasonably incurred by the landlord to remove and store the property.

(7) Where a landlord stores personal property on the residential premises in accordance with subsection (1), the storage costs referenced in subsection (6) shall be the lesser of the standard rate charged by public storage facilities or the rental rate of the residential premises.

(8) Where a tenant or owner takes possession of personal property within the 30 day period, the landlord shall notify the director at the earliest reasonable opportunity.

(9) Where a tenant or owner does not take possession of personal property within the 30 day period, the landlord may sell the personal property subject to the terms and conditions set by the director.

(10) Where personal property is sold under subsection (9), the landlord

- (a) may keep from the proceeds of the sale, the amount**
 - (i) of the costs reasonably incurred by the landlord for the removal, storage and sale of the personal property, and**

(ii) necessary to satisfy an order made by the director for compensation payable to the landlord by the tenant; and

(b) shall, at the earliest reasonable opportunity, deliver to the director

(i) the proceeds of the sale, less the amount kept under paragraph (a), and

(ii) a written statement of account regarding the sale and distribution of the proceeds.

(11) The director shall hold the proceeds delivered by the landlord under subparagraph (10)(b)(i) in trust for the tenant or owner of the personal property in an interest bearing trust account in a financial institution located in the province authorized to accept deposits.

(12) Where proceeds held in trust by the director are not claimed under subsection (11) within one year after the sale, the director shall remit the proceeds, together with interest earned, to the Consolidated Revenue Fund.

(13) Where a tenant or a person claims to be the owner of personal property sold under subsection (9), the director under subsection (11) or the Minister of Finance under subsection (12) shall, upon satisfactory proof of the claim, pay the proceeds to that tenant or person.

20. The landlord was granted an order to dispose of the tenant's belongings. The landlord followed the guidelines set out in the Act and after being granted permission to dispose of the property, still stored the property for an additional six weeks. The landlord was not neglectful or malicious in his actions.
21. I acknowledge that the tenant no longer has his belongings, however, the tenant is responsible for this loss. The tenant did not have his belongings moved within the 30 days. It is unrealistic to expect the landlord to store a tenant's property past this time.
22. Section 43 of the *Residential Tenancies Act, 2018*, is as follows:

Refusal or dismissal of application

43. The director may refuse to accept an application under section 42 or may dismiss an application at any time where, in the director's opinion, the matter is trivial, frivolous, vexatious or has not been initiated in good faith, and may issue an order to that effect.

23. The application for \$200,000.00 without proof or evidence of loss has caused undue stress on the landlord and his wife. The tenant's actions have been frivolous and vexatious and are not in good faith. I find that his claim for loss fails.

Decision

24. The tenant's claim for loss fails.

Summary of Decision

25. The tenant's claim for loss fails.

November 22, 2022

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office