

Residential Tenancies Tribunal

Application: 2023 No. 0165 NL

Decision 23-0165-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:07 AM on 02 May 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing, as did the respondent, [REDACTED], hereinafter referred to as “the landlord”. The landlord was represented by his legal counsel, [REDACTED].
3. This hearing was originally convened on 13 April 2023 but then postponed due to inadequate service of evidence by the tenant. Notice of the rescheduled hearing was provided by the Residential Tenancies Office (A#1). The tenant provided an affidavit of service and proof of service related to an original hearing date of 22 March 2023 and proof of service was provided (T#1).
4. The details of the claim were presented as a tenancy that ended on 17 October 2022. This was caused by the sheriff removing the tenant from premises on 17 October 2022 in response to an order of Vacant Possession that was secured by the landlord on 21 September 2022 (L#3 see Order No. 2022 – 672-NL).
5. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. The standard of proof in these proceedings is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

6. The tenant is seeking the following:
 - Compensation for inconvenience in the amount of \$6,450.00; and
 - Possessions returned in the amount of \$2,040.00.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018 (the Act)*.
8. Also relevant and considered in this case is section 10 of the *Act*.

Preliminary Matters

9. As previously noted in Decision # 2022-1004-NL, the Landlord testified that a vacant possession order was granted after he served the tenant with a section 18 notice of termination in March 2022, with a stated move out date of 30 June 2022. The tenant resided in the rental premises located at [REDACTED] with her two teenager daughters. It is also noted that the tenant previously sought compensation for inconvenience as well as compensation for possessions returned in her prior application that was heard by this tribunal on 16 January 2023. This claim was not successful because the tenant failed to establish on the balance of probabilities that she was entitled to compensation.
10. Both sides agreed that the tenant's possessions were delivered to her new premises over three days between 31 January 2023 and 04 February 2023. The landlord testified that a total of 16 trips were made by the landlord's spouse [REDACTED] and her mother [REDACTED] and that he at no point sought compensation for these efforts. Both sides also agreed that the tenant's possessions were removed from the rental premises to a shed on the property prior to being delivered to the tenant.

Issue 1: Compensation for Inconvenience (\$6,450.00)

Tenant's Position

11. The tenant referred generally to a written summary of items said to have been damaged (T#2). She testified that she has no receipts for any of these items and that they have all been taken to the dump. The tenant also referred generally to photos of the items said to be damaged and taken to the dump (T#3). She did not provide any photos related to the condition of the rental premises or her items within the rental premises on the day that she was removed by the sheriff. She repeatedly testified that her items were not damaged while they were in the premises, but that they were damaged when they were provided to her new residence by the landlord's spouse and mother. The tenant also disputed the landlord's claims that she made no efforts to collect her possessions after the eviction. She repeatedly testified that she attempted to collect her goods and was prevented from doing so. However, no supporting verifiable documentation related to these claims was provided. After questioning by the landlord's legal

counsel, the tenant stated that she does not know how or when the items said to be damaged, were actually damaged.

12. The tenant called three witnesses to support her claims that the damaged items were not damaged when being used by the tenant and her family in the rental premises.
 - Witness1: [REDACTED] – tenant's daughter. She testified that her desk was not previously broken and that she was present at the tenant's new premises when the tenant's goods were delivered by the landlord's spouse and mother. When questioned by the landlord's legal counsel, witness1 testified that she "has no idea" who damaged her desk.
 - Witness2: [REDACTED] – tenant's friend. She testified that she was present at the rental premises on the day the tenant was removed by the sheriff and that the tenant's possessions were all in good condition at this time. When questioned by the landlord's legal counsel, this witness acknowledged that she was not present at the tenant's new residence when her possessions were delivered.
 - Witness3: [REDACTED] – tenant's friend. She testified that she stayed at the tenant's premises the weekend prior to the tenant's eviction (Monday 17 October 2022) and that the tenant's possessions were all in good condition at that time. When questioned by the landlord's legal counsel, this witness testified that she was not present on the day of the eviction and that she has not had any contact with the possessions since that time.

Landlords' Position

13. The landlord testified that he had been informed by the tenant after the eviction that she could not afford a moving company. He also testified that he allowed the tenant's daughter to collect some possession on November 2022 and that he offered during the 16 January 2023 hearing to deliver the tenant's remaining possessions to her new residence. The landlord testified that he made this offer as a sign of good will to resolve a stressful situation. The landlord also testified that his wife and mother spent multiple days carefully packing the tenant's possessions. He did not provide any photos of the premises and the tenant's possessions prior to her removal by the sheriff. But he did provide photos of the tenant's possessions as they were transported to her new residence (L#1). He testified, that if and where there were broken items, these items were broken prior to transport by the landlord's wife and her mother.
14. The landlord called two witnesses and both were questioned by the landlord's legal counsel: [REDACTED], hereinafter referred to as "witness1" and Vera Watkins hereinafter referred to as "witness2".
15. Witness1 testified that the condition of the possession on delivery were the same as the condition on pickup and packing. She denied causing any damage to the tenant's possession. Witness1 testified that all fragile items were carefully

packaged and hand delivered to the tenant. She also testified that she observed the tenant's couch left out in the yard overnight between 31 January 23 and 01 February 2023. Witness2 testified that everything was carefully packaged and nothing was left behind.

16. The landlord's legal counsel argued that the tenant failed to satisfy this tribunal legal standard for awarding damages and should not be awarded compensation.

Analysis

17. Regarding the tenant's claim for compensation for damaged possession, I agree with the landlord's legal counsel that the tenant was required to establish on the balance of probabilities that she is entitled to compensation.
18. It is noted that the applicant in any damage claim is required to provide and speak to the evidence (witness, documentary, or recorded) necessary to establish on the balance of probabilities that:
 - That the damage they are claiming compensation, exists;
 - That the respondent is responsible for the reported damage through a willful or negligent act; and
 - The value to repair or replace the damaged item(s).
19. If and when damaged items pass the validity test of damages based on the balance of probabilities, actual compensation amounts are calculated in accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*. According to this policy, higher compensation is awarded for damage of newer items, less compensation is awarded for items considered to have exceeded their serviceable life.
20. Specific to this dispute, I find that I am unable to consider any award for financial compensation because I agree with the landlord's legal counsel that the tenant failed to satisfy this tribunal tests for damages. I say this because:
 - The tenant did not provide specific and or verifiable information related to damage identified and or why everything was taken to the dump;
 - The tenant did not provide specific and or verifiable information related to the source of the damage;
 - The tenant provided no verifiable information related to the costs to repair or replace the damaged items. All she stated, was that all items were taken to the dump.

Decision

21. The tenant's claim for compensation for inconvenience does not succeed in any amount.

Issue 2: Compensation for missing possessions (\$2,040.00)

Tenant's Position

22. The tenant referred generally to a written summary of items said to have been damaged (T#2). She testified that she is missing all items and only made specific reference to the freezer and stated that she had two freezers, only one of which was returned to her.

Landlords' Position

23. The landlord testified that the freezer on the premises was a fixture of the premises. Witness1 and Witness2 both testified that they did not see any of the missing possessions while packing and delivering all other possessions to the tenant. The landlord testified that it was most likely that the possessions claimed to be missing, were previously removed from the premises by the tenant or a member of her family. Regarding ceiling fans in the premises, the landlord testified that he is willing to return these to the tenant, she just needs to get an appropriate professional involved for their removal.

Analysis

24. The tenant claimed that she was missing assorted items. However, she failed to establish on the balance of probabilities that she even owned these items in this first place. Consequently, I was not convinced that the landlord was responsible in any way for their alleged disappearance.

Decision


25. The tenant's claim for compensation for missing possessions does not succeed in any amount.

Summary of Decision

26. The tenant's claim for compensation for inconvenience does not succeed in any amount.
27. The tenant's claim for compensation for missing possessions does not succeed in any amount.

05 May 2023

Date



Jaclyn Casler
Residential Tenancies Tribunal