



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MND

Introduction:

This hearing dealt with an application by the tenant seeking a monetary claim for damages under the *Act* related to a breach of the tenancy agreement by the landlord. The hearing was conducted over two separate telephone conferences and both parties appeared, provided affirmed evidence, made rebuttal and brought forward witnesses.

Although there were multiple issues between the parties, this was the tenant's application. Therefore, I have disregarded any evidence presented by the landlord related to damages she alleges were a result of the tenant. I have also disregarded evidence presented by the tenant with respect to Ordering the landlord to comply with the *Act* as a tenancy no longer exists between the parties. Finally, I have disregarded evidence presented respecting the tenant's security deposit as this was not an issue brought forward in the original application. The tenant has leave to file a separate application respecting the return of her security deposit.

Issue to be Determined:

The only issue before me is whether the tenant has suffered loss or damage due to the breach of contract or negligence of the landlord. Specifically, the tenant is requesting damages in the sum of \$5,000.00 related to the loss and/or damage of her personal possessions.

Background and Evidence:

Almost every aspect of this tenancy was contradicted by the parties. There was no written documentation setting out the terms of the tenancy agreement. However, I do accept on the balance of probabilities that the tenancy began on approximately February 15, 2007 and ended on September 4, 2007. I also accept that the tenant moved into the rental unit on or before February 15, 2007. I find that the agreed to rent was \$650.00 per month and that the tenant paid a security deposit of \$325.00 on January 31, 2007.

Although each party submitted a significant amount of written submissions, including photographs in addition to their oral submissions, I found most of the evidence to be unreliable, inconsistent and irrelevant. It was clear, given the animosity between the parties and the lack of any corroborative written documentation that each party was

creating or recalling the circumstances to strengthen their own version of events. Therefore, I have found that I can place little weight on any of the oral testimony presented by the landlord or the tenant.

I also found that the parties' witnesses provided no insight into this dispute. Each witness had limited knowledge with the circumstances and provided no valuable evidence in support of either party to this dispute. Therefore, I have disregarded any evidence presented by the parties' witnesses.

Out of all the evidence presented during the hearings I have gleaned the following findings of fact related to the issue before me:

- I accept that the parties agreed to end the tenancy as of the end of August 2007;
- I accept that while the tenant was attempting to move out, she experienced multiple problems with moving company's and friends which delayed her from vacating the rental unit; and
- At sometime on September 4, 2008 the tenant's possessions were placed outside of the rental unit and left there for several weeks.

Each party claims that the other is responsible for the tenant's possessions being placed outside. The tenant claims that she left the rental unit during the day on September 4, 2008 to find a truck to move her possessions and on her return all of her possessions had been moved outside of the rental unit. The tenant submitted that two young adults were left behind while she was away that day and that they could corroborate her version of events. The landlord claims that the tenant moved all of her possessions out of the rental unit and then abandoned them. The landlord submitted that her neighbour witnessed the tenant moving her possessions which corroborated her version of events.

As noted above, neither of the parties' witnesses provided any corroborate evidence in support of one story over the other. In examination it was apparent that the landlord's witness could not identify the tenant and could provide no clear recollection of who was moving items during that day. The tenant's witness provided unreliable testimony as well. He could not identify the landlord or provide any specifics related to alleged events. It was clear to me that he was reluctant to participate in the hearing and I do not accept his evidence.

In the absence of any third party or substantive evidence to accept one version of the events over the other I find that each story has a likely possibility.

Analysis:

Section 16 of the *Residential Tenancy Policy Guidelines Manual* provides some of the following considerations when determining damages for breach of contract:

Claims for Breach of Contract

Prior to making a claim for breach of the tenancy agreement, the Legislation permits either the landlord or the tenant to apply for arbitration for an order that the other party comply with the tenancy agreement or the Act that governs the agreement. The purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out. It is up to the person claiming to prove that the other party breached the contract and that the loss resulted from the breach. The loss must be a consequence that the parties, at the time the contract was entered into, could reasonably have expected would occur if the contract was breached. Losses that are very unexpected are normally not recoverable. The party making the claim must also show that he/she took reasonable steps to ensure that the loss could not have been prevented, and is as low as reasonably possible.

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

Criteria Considered When Awarding Damages

If a claim is made by the tenant for loss of quiet enjoyment, the arbitrator may consider the following criteria in determining the amount of damages:

- the amount of disruption suffered by the tenant.
- the reason for the disruption.
- if there was any benefit to the tenant for the disruption.
- whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant.

If a claim is made by a tenant for damages for breach of the abandonment regulations by the landlord, the normal measure of damages is the market value of the lost articles, i.e. the price of a similar item in the market. The price of a similar item in the market must include reference to its condition at the time of its loss. For items, such as photographs, which may have limited market value but great sentimental value to the tenant, an arbitrator may consider the size and scope of the collection and the intrinsic value to the tenant.

As provided in the policy, the onus of proof in this application is on the tenant. She must show that the landlord breached the tenancy agreement or the *Act* and that her losses resulted as a result of that breach. However, the tenant must also demonstrate that she took reasonable steps to minimize her losses and establish the real, “as is” market value of her possessions.

I find that the tenant has failed to support her claim. As indicated above, all of the documentary and witness evidence failed to establish, on the balance of probabilities, who removed the tenant’s possessions from the rental unit. I have found, given the lack of the parties’ credibility, that it is possible that either one could have moved the possessions. The tenant has failed to prove that the landlord was the cause of the breach and the damages.

I also reject the tenant’s claimed value for her possessions on the basis that she left her possessions for several weeks after they were placed outside. This suggests to me that the valuables, and the damages, were minimal as the tenant was not motivated to minimize her losses.

Conclusion:

I find that the tenant has failed to establish or prove her monetary claim and I dismiss her application without leave to re-apply.

Dated September 17, 2008.