



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: MNR, MND, MNDC, MNSD, & FF

Introduction:

This hearing dealt with cross applications by the parties. The tenant is seeking a monetary claim for damage and loss due to a breach of the *Act* by the landlord. The landlord is seeking a monetary claim for loss of rent and damage to the rental unit. The landlord also seeks to retain the tenant's security deposit plus interest in partial satisfaction of this claim.

Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party. The landlord's witnesses provided affirmed evidence and the tenant was provided the opportunity to cross examine the witnesses.

Issues to be Determined:

Has the tenant established a monetary claim due to loss and damage under the *Act*?
Has the landlord established a monetary claim due to loss of rent and damage to the rental unit?

Background and Evidence:

This tenancy began on August 1, 2006 for the monthly rent of approximately \$525.00. The current rent is \$570.00. The tenant paid a security deposit of \$262.50 on August 1, 2006.

This tenancy ended abruptly on August 18, 2008 when the landlord took possession of the tenant's rental unit and removed all of her possessions. The landlord took this action after there was a party at the tenant's rental unit the night before which ended with an alleged fight. According to the evidence of the landlord and the landlord's witnesses, the door to the rental unit was severely damaged and there was significant amount of blood in the area.

The tenant returned home to the rental unit sometime that day. The tenant did not have a key to her rental unit after apparently giving it to friends while she was away for the weekend. The landlord denied her access to the rental unit and showed the tenant where her belongings were outside of the building. The tenant states that she was away for the weekend and had no knowledge of the alleged party and fight that had occurred at her suite. The tenant stated that she left the suite and did not return. When

questioned why she did not return to collect her possessions the tenant indicated that she had nowhere to store or move her items.

The landlord stated that the tenant made no attempt to collect any valuables from the collection of her possessions which had been moved outside. The landlord stated that the tenant left her possessions for over a week, after which they had them disposed of.

The tenant has filed for compensation for her lost possessions for the sum of \$25,000.00. The tenant provided no evidence to support her claim, except for a hand written list of the possessions she apparently had. I note that this list included items such as expensive jewellery and three flat screen televisions.

The witnesses brought forward by the landlord were directly involved in removing the tenant's possessions from the rental unit at the request of the landlord. They were asked to review the tenant's extensive list of alleged possessions and asked if they recalled such items. The witness evidence confirmed only portions of the items claimed by the tenant including things such as toaster ovens, mattresses, lamps, clothes, and used computers. Both witnesses stated that all the tenant's possessions appeared to be old and used. They denied any expensive jewellery or flat screen televisions. The witnesses also confirmed the damage to the door of the rental unit and the fire door in the common area. They also confirmed seeing a lot of blood in the area.

The landlord is seeking a monetary claim for the sum of \$1,909.39 due to the damage caused to the tenant's unit and the fire door in the common area. The landlord is also seeking unpaid rent and requesting to retain the tenant's security deposit plus interest in partial satisfaction of this claim.

Analysis:

I have carefully considered all the evidence before me, including the affirmed evidence of the parties and the witnesses. Based on the inconsistency between the tenant's evidence and the evidence of the landlord's witnesses, I find that I can place very little weight on the evidence submitted by the tenant respecting the possessions she claims to have had in the rental unit. I find that the tenant's evidence is fabricated as demonstrated by her claims that there were three flat screen televisions worth approximately \$2,200.00 or expensive jewellery worth approximately \$3,400.00. I find that the landlord or the witnesses who moved the tenant's possessions on the day in question would certainly have noted such expensive items.

I also highly question the claimed value of the tenant's possession based on her own actions on the day in question. The tenant had full knowledge on the day she was evicted from the rental unit as to where her possessions were being placed. She had the opportunity to collect expensive items at that moment and certainly a reasonable person would have made arrangements to have expensive electronic equipment, such as the televisions or a stereo system, picked up. The tenant took none of these actions.

Notwithstanding my conclusion about the credibility of the tenant and her claim for alleged lost possessions I am satisfied that she incurred a significant loss. Based on the evidence of landlord and his witnesses it has been established that many of the tenant's

possessions were removed illegally from the rental unit and eventually disposed of contrary to the regulations.

From the evidence presented I am satisfied that the possessions such as all the tenant's bedroom items, clothes, appliances and other household items were present. What I lack is any reliable assessment of the value of these possessions. I am also satisfied that the tenant did collect one of her possessions – the urn containing her husband's ashes.

The landlord has acknowledged their egregious action of evicting the tenant outside of the provisions of the legislation. I am also satisfied that the landlord has established that the tenant's guests significantly damaged the landlord's property, placed the landlord's property at risk and seriously jeopardized the health and safety of other occupants in the rental unit.

Given the merits and justice of the circumstances before me I am satisfied that the tenant is reasonably and effectively compensated for her loss by offsetting the damage caused by the actions of her guests. I am satisfied, on the balance of probabilities that the tenant's loss due to the landlord's breach is equal to the damage established by the landlord due to the tenant's breach. In addition to this determination I also find that the landlord has the right to retain the tenant's security deposit plus interest.

Conclusion:

I grant each of the parties' applications in part. I find, given the evidence that each of the parties' established damage due to breach of the *Act* and tenancy agreement offsets their respective claims. I find that each party is responsible for their own cost for pursuing their respective claims.

Dated January 21, 2009.

Dispute Resolution Officer