



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *CNR, MNR, MNDC, OLC, ERP, RPP, OPT, LAT, DRI.*

Introduction

This hearing dealt with an application by the tenant for an order to cancel the notice to end tenancy for unpaid rent, pursuant to Section 46 of the *Residential Tenancy Act*. The tenant has also applied for compensation for damage or loss under the Act and costs of emergency repairs, pursuant to Section 67. The tenant has also applied to seek landlord's action to comply with the Act, make emergency repairs, return the tenant's possession and reduce rent pursuant to Sections 62, 32 and 65. The tenant is seeking an order of possession and authority to change locks, pursuant to Sections 54 and 70.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

The landlord pointed out, prior to the start of the hearing that this matter was not under the jurisdiction of the *Residential Tenancy Act*, as the property was a resort and was legislated by the *Inn keepers Act*. However, upon discussing the merits of the case, I determined that the relationship between both parties was a landlord/ tenant relationship as there was an agreement made between both parties which outlined a monthly rent and a security deposit and the landlord issued a receipt for the same.

At the start of the hearing the tenant stated that the tenant did not reside at the dispute unit and hence was withdrawing the tenant's application for all portions of the application except for a monetary order for damage to the tenant's property and for an order for the return of the tenant's property.

Issues

- Is the tenant entitled to \$1090.00 that the tenant is claiming as compensation for damages under the Act?

- Is the tenant entitled to an order for the return of the tenant's property?

Background and Evidence

Based on the sworn testimony of both parties, the facts are as follows:

The tenancy started on December 01, 2008. The monthly rent was set at \$500.00 payable in advance on the first day of each month and the tenant paid a security deposit of \$250.00 at the start of the tenancy. The tenant stated that the cabins that were assigned to the tenant at the start of the tenancy and then on December 12, 2008 were dirty and the tenant spent a total of 10 hours cleaning the cabins. The tenant failed to pay January rent and was served a notice to pay on January 07, 2009. The tenants made an application for a crisis grant from the Ministry of Housing and Social Development and received the assistance on January 16, 2009. The tenant stated that the delay occurred due to the landlord giving false information regarding the notice to end tenancy, to the worker who was processing the crisis grant.

On January 16, 2009, the tenant stated that the tenant was locked out of the cabin and was allowed back in with the assistance of the local police. The tenant stated that the tenant's belongings were moved out of the cabin and upon receiving them, noticed some damage to these items. At the time of this hearing, the tenant stated and the landlord agreed that some belongings of the tenant were being held by the landlord for monies owed by the tenant.

The landlord stated that he was within his rights to hold the belongings of the tenant for monies owed as per the *Inn Keepers Act* and the landlord maintained that the resort was governed by this Act and that the landlord was in compliance with this Act.

The tenant has applied for compensation in the amount of \$1090.00 which consists of the following:

1.	Propane Tank	\$70.00
2.	Heater	\$100.00
3.	Lock	\$20.00
4.	Computer repair	\$100.00
5.	Software and programs	\$500.00
6.	Power converter	\$100.00
7.	Spoiled food	\$50.00
8.	Cleaning	\$150.00
	Total	\$1090.00

Analysis

It is important for the claimant to know that to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the claimant must satisfy each component of the test below:

Test For Damage and Loss Claims

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenant's claim for compensation does not meet all the components of the above test. The tenant did not submit any evidence to support the tenant's claim of expenses incurred as a result of the landlord removing the tenant's property from the cabin and subsequently returning the property to the tenant. The landlord is holding the propane tank and the heater and will be required to return these items to the tenant. The tenant has submitted photographs of a computer, jewellery box, heater and power converter. However, these photographs are insufficient evidence to determine that the damage that the tenant is claiming was caused by the landlord. Also, the tenant has not submitted any evidence by way of receipts to verify the costs that the tenant has incurred due to the alleged mishandling of the tenants' property by the landlord. The tenant did not have any prior arrangement with the landlord with regard to payment for cleaning the cabins. Hence the tenant's monetary claim for compensation is dismissed. The landlord must return the property that belongs to the tenant and is in the possession of the landlord and hence I grant the tenant an order for the recovery of the tenants' property.

Conclusion

The landlord is ordered to return the tenants' property to the tenant. The tenant has not proven the tenant's case for compensation and hence this portion of the tenant's claim is dismissed.

Dated February 09, 2009.

Dispute Resolution Officer