

Dispute Resolution Services

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

Decision

Dispute Codes: CNR, MNDC, MNSD, RP

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end the tenancy, an order for the return of her security deposit, an order that the landlord return the tenant's personal property and a monetary order for the value of the personal property. Both parties participated in the conference call hearing and had opportunity to be heard.

At the outset of the hearing the parties advised that the tenant was no longer living in the rental unit. I consider the claim for an order setting aside the notice to end tenancy to be withdrawn as it is no longer required.

Issue(s) to be Decided

Is the landlord liable for the loss of the tenant's goods?

Is the tenant entitled to compensation?

Is the tenant entitled to the return of her security deposit?

Background and Evidence

The tenant testified that after having been away for a few weeks, she returned to the rental unit on or about February 12 to find the landlord in the rental unit. The tenant testified that she saw that most of her belongings had been removed from the rental unit and that she was told by the landlord that she could not enter the unit. The tenant claimed that the landlord removed all of her belongings, which included a computer, bicycle, chairs, dresser, kitchen items, couch and personal items such as pictures.

The landlord testified that the tenant did not pay rent in February and on February 8, the landlord found the door to the rental unit wide open and saw that the tenant's "big things," meaning her furniture, had been removed with only rubbish and items of little or

no value remaining. The landlord testified that she considered the rental unit to have been abandoned and as the items remaining in the rental unit had little or no commercial value, she simply discarded them. The landlord acknowledged that she did not permit the tenant to move back into the rental unit. The landlord provided photographs which she claims were taken in December which showed the rental unit in general disarray, with clothing and other items strewn throughout. The photographs show a child's bicycle, several small kitchen appliances, a couch and a cabinet in the unit.

Analysis

The Residential Tenancy Regulation provides specific guidance to landlords regarding when they can consider a rental unit to have been abandoned. Regulation 24(1) provides as follows:

Abandonment of personal property

- 24** (1) A landlord may consider that a tenant has abandoned personal property if
- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
 - (b) subject to subsection (2), the tenant leaves the personal property on residential property
 - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
 - (ii) from which the tenant has removed substantially all of his or her personal property.
- (2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if
- (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
 - (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.
- (3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.
- (4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

I find that the landlord had no right to treat the rental unit as abandoned. The tenant had paid rent for January and her rent for February was just 8 days overdue when the landlord entered and began discarding her belongings. If as the landlord claims she had discovered the door to the rental unit open on February 8, a reasonable course of action would have been to shut the door and follow the procedure outlined in the Regulations with respect to dealing with abandoned property. Had the landlord acted in a reasonable manner, the tenant would have returned to have discovered items missing and could have drawn the conclusion that the items had been stolen by a stranger. Instead the landlord entered the rental unit and removed and discarded the items that were there, choosing to disregard her obligations under the law and opening the door to the suspicion that she had removed all of the missing items. I find on the balance of probabilities that the landlord removed everything from the rental unit. As the landlord has testified that she discarded everything which was removed from the unit, I decline to order to return the items.

The tenant has proven liability for her loss, but must also prove the quantum of her claim, meaning that she must show the value of what was lost. The tenant was unable to provide receipts, photographs or any other evidence showing the value or existence of her belongings. The only evidence provided as to the existence of any belongings in the rental unit are the photographs submitted by the landlord. In the absence of any other evidence, I assess the value of the tenant's belongings at \$300.00 and I grant the tenant an order under section 67 for that sum. This order may be filed in the Small Claims Court and enforced as an order of that Court.

As for the tenant's claim for the return of her security deposit, until the date of the hearing the landlord did not have the tenant's accurate forwarding address as the address provided on the tenant's application for dispute resolution was inaccurate. The landlord is not obligated to deal with the security deposit until she has received the tenant's forwarding address in writing. At the hearing the landlord was advised that as of April 28 she was considered to have received the tenant's forwarding address and that she had to either return the deposit in full or make a claim against it within 15 days. The tenant's claim for the return of the deposit is dismissed with leave to reapply as it is premature.

Conclusion

The tenant is granted a monetary order against the landlord for \$300.00.

Dated April 29, 2009.