

# Dispute Resolution Services

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

## **DECISION AND REASONS**

### **Dispute Codes:**

*MNDC, MNSD*

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation for suffering, for loss under the *Act* and for the return of double his security deposit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Was the tenant unlawfully evicted? Has the tenant established a claim for compensation? Is the tenant entitled to the return of double the security deposit?

### **Background and Evidence**

The tenancy began on October 01, 2008. The monthly rent was \$375.00 and the tenant paid a security deposit of \$187.50.

The tenant testified that he had problems with a female visitor and other personal issues and was given verbal warnings by the landlord. On or about December 28, 2008, the landlord banged on his door at 10 p.m. and asked him to move out. The tenant stated that the landlord did not give him an eviction notice. The tenant also stated that he did not dispute his eviction because he was not aware of his right to do so.

The next morning the tenant moved his belongings out of his rental unit. Since he had no place to move to, the tenant stored his belongings with a friend who was renting a unit in the same hotel.

The tenant stated that the landlord refunded his rent for January, after he moved his belongings out of the rental unit. The tenant was unsure of the date he was asked to

move out, the date he moved out and the amount of the cheque the landlord gave him, upon moving his belongings out of the rental unit.

The tenant stated that he returned several times in the next couple of weeks, to retrieve his belongings, but was not allowed access to his friend's room. Later, during the hearing the tenant agreed that he was escorted once by the desk clerk to the friend's room but the friend was not in. He also agreed that the desk clerk let him in unescorted, on another occasion, but he was unable to retrieve his belongings as his friend was not in.

The tenant stated that he never did get his belongings back as the friend who was storing them, was evicted. The tenant is claiming \$1047.98 for his lost items which include a microwave, crock pot, toaster oven, coffee pot and cups, grill, hot plate, shoes and clothing. The tenant is also claiming \$375.00 for double the security deposit, and \$1000.00 for suffering and "loss of home" caused by an unlawful eviction.

The landlord testified that the tenant did not abide by the hotel rules and verbally threatened hotel staff. In his written submission, the landlord spoke of verbal warnings to the tenant regarding noise, bringing in a female guest after hours via the fire escape and threatening hotel staff with violence. The landlord stated that the tenant was disruptive with no respect for house rules or the quiet enjoyment of other tenants.

The landlord met with the tenant on January 06, 2009 to discuss a solution and both parties reached an agreement to end the tenancy. On January 07, 2009, the tenant voluntarily moved his belongings to his friend's rental unit in the same hotel.

A witness for the landlord who works the front desk, confirmed that he observed the tenant move his belongings to his friend's room and on completion of the move, the witness called the manager to report that the tenant's room was free of the tenant's belongings.

The manager made arrangements to issue a cheque to the tenant in the amount of \$477.80 which consisted of the prorated balance of his rent for January and the security deposit of \$187.50.

The landlord has filed a copy of the cheque issued to the tenant and the tenant agreed that he had received the cheque, but could not remember the amount of the cheque. The landlord also confirmed that it is common practice to return the security deposit to the tenant after the tenant has removed all his belongings from the rental unit.

The witness for the landlord confirmed that the tenant returned on several occasions to retrieve his belongings, but for safety and security reasons, he was unable to allow the tenant into the friend's room in the absence of the friend.

### **Analysis**

Based on the sworn testimony of both parties, I find that the landlord and the tenant had come to a mutual agreement to end the tenancy, for the following reasons:

- The tenant did not dispute the landlord's request to end the tenancy.
- The tenant accepted a refund of his rent for January.
- The tenant received his security deposit in full.
- The tenant made arrangements to store his belongings at his friend's unit

I find that the tenant voluntarily moved out of the rental unit and therefore was not unlawfully evicted. Accordingly, the tenant is not entitled to compensation for suffering and homelessness and his claim for \$1000.00 for suffering and homelessness is dismissed.

The tenant removed all his belongings from the rental unit and voluntarily stored them in the rental unit of a friend who was a tenant of the hotel. I find that the landlord is not liable for the storage or care of the tenant's belongings once the tenant has removed them from the rental unit. Therefore the tenant's claim for \$1047.98 for the value of his lost personal items is dismissed.

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute

resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

I find that the tenancy ended on January 07, 2009. I further find that the landlord repaid the security deposit on that same day in compliance with section 38. Therefore the tenant's claim for the return of double the security deposit is dismissed.

### **Conclusion**

The tenant has not proven his case for compensation and therefore his application is dismissed in its entirety.

Dated June 09, 2009.

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Dispute Resolution Officer