



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC

Introduction

This matter dealt with an application by the tenant for money owed or compensation for loss or damage under the Act, regulation or tenancy agreement.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were sent to the landlord by registered mail on June 25, 2009. The landlord confirmed she had received them.

Having heard the evidence of the parties and witness, under oath, and having given the parties the opportunity to give their evidence orally and to provide written and documentary evidence, and to cross-examine the other party and witness, and to make submissions to me, I have determined:

Issues(s) to be Decided

- Is the tenant entitled to a monetary Order for damage or loss under the act?
- Is the tenant entitled to the return of his security deposit?

Background and Evidence

This tenancy started on September 01, 1999. The tenant rented a mobile home and property for rent of \$572.00 per month. The tenant paid a security deposit of \$275.00 on September 01, 1999.

The tenant testifies that he was served with a Two Month Notice to End Tenancy for the landlord's use of the property on April 25, 2008. The tenant did not dispute this Notice and moved from the rental unit on July 01, 2008. The tenant testifies that two days prior to moving he broke his rib and had help moving from two neighbours. After they had completed the first run, taking items to the tenants' new premises, the neighbours returned to the tenants' mobile home and found that it was locked. They telephoned the tenant who attempted to get in contact with the landlord by telephone. The tenant testifies that he was unable to contact the landlord.

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The tenant claims that he left an amount of personal belongings at the property which he was collecting on the next trip. However, as the landlord had locked the mobile home he was unable to collect the rest of his belongings or carry out a clean of the mobile home. The tenant testifies that he had left his forwarding address in the rental unit in an envelope addressed to the landlord. The tenant was unaware of his rights under the tenancy Act until this year when he filed his application for the return of his security deposit and for compensation for his personal belongings the landlord disposed of. These items consist of second hand bunk bed frames at a sum of \$150.00, approximately three years old; 16 golf cart batteries for the tenants solar system at a cost of \$125.00 each, approximately 10 years old; two chainsaws at a cost of \$400.00 plus bars and chains at a cost of \$40.00, approximately 2 to 3 years old and partially worn. In addition to these items there was also some cookware. The tenant also testifies that he subsequently found out that the landlords did not use the property for the reasons stated on the Two Month Notice and seeks compensation for this Notice.

The tenant testifies that he wrote to the landlord again on April 29, 2009 with his forwarding address and a request for the return of his security deposit. The landlords wrote back to the tenant stating that due to the damages left to the property they would not be returning his deposit to him.

The landlord states that the tenant moved out and did not clean the rental unit. They also found that the property was not locked after he had left and returned the keys to them so they locked it in order to secure it. When they went inside after the tenant had vacated they found an excessive amount of garbage, the unit was filthy, there was damage to the carpet and linoleum as well as other damage to some areas of the interior. Alongside this the tenant had left a large amount of garbage and some personal items in the property. The landlord states that they cleared some items they felt had some value and placed them in the tenants' motor home that was left on the property along with a boat and vehicle. These items were collected on July 05, 2008. The landlord testifies that they were not aware of a letter left in the unit addressed to the landlord. As they did not have a forwarding address for the tenant they removed and stored some of his belongings at their home in the event he came to collect them. These items were kept for three months and then disposed of. The landlords state that they spent many hours attempting to clean the mobile home.

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The landlord testifies that at the time of giving the tenant the Two Month Notice they had every intention of moving into the mobile home on the property as they were ready to begin building a home on the land and would live there while the work was completed. Due to the state the mobile home was left in after the tenancy had ended the landlords felt they could not live in it and so they sold it at a loss. Due to the downturn in the economy they have not yet started the building work on the property.

Analysis

Based on the testimony and evidence presented, I find that the tenant has not fully established his claim for damage or loss of his personal belongs.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or 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 incurred.

I find that the tenants claim for compensation does not meet all of the components of the above test. I find that the tenant did not remove his belongings and garbage from the property and clean the mobile home because the landlord had locked the doors preventing his return in direct contravention of the Act. However, the tenant was aware where the landlords lived and did not go to their home to get the keys to gain access to the mobile home. If the tenant had done so he could have shown that he had mitigated his loss and recovered the items the landlord had stored for him. The tenant has been unable to provide any evidence as to the verification of the actual amount required to compensate him for his loss. The landlord did store the tenant's belongings for the required length of time permitted under section 25 of the regulations. The landlords are required to keep a written inventory of the tenants belongings and keep particulars of there disposition and I find in this instance that this was not done. The landlord is at fault for locking the doors to the mobile home without ensuring the tenant had keys to go back in to finish removing his belongings and clean the property pursuant to section 31 of the Act. Therefore, due to the above I find in partial favor of the tenants claim for some of his belongings such as the bunk bed frames, golf cart batteries and two chain saws, chains and rods and award the tenant a nominal amount in compensation for these

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losses of \$400.00. This amount has been reduced due to the age of the items and because the tenant is partially at fault for not collecting them from the landlord. The remainder of the tenants claim is dismissed due to a lack of evidence and knowledge of the approximate value or age of the items.

Section 51 of the Act states that if a landlord does not take steps to accomplish the stated purpose for ending the tenancy under s. 49 within a reasonable period after the effective date of the notice or the rental unit is not used for that stated purpose for at least 6 months the landlord must pay the tenant an amount that is equivalent to double the monthly rent payable under the tenancy agreement.

The landlord's claim that they issued the Notice to End Tenancy in good faith and due to the terrible state the tenant left the rental unit in they could not live in it. They made every attempt to clean the property and obtained quotes for new flooring and kitchen counter tops. The landlords' evidence states that the mobile home was in a disgusting state. They have provided some photographic evidence and statements from other parties to support this. While I accept that the landlord did not give the tenant opportunity to clean the rental unit I find that the repairs and overall state of the mobile home was beyond normal cleaning. In the end due to the unforeseen expense to renovate the property they decided to sell it at a loss. The property assessment for 2008 for this mobile home was \$41,400.00 and the landlords sold it for \$1,500.00. In this instance I prefer the evidence of the landlord and dismiss this section of the tenants' application for damage or loss.

When a two month Notice is issued to a tenant for the landlord's use of the property the tenant is entitled to compensation to the equivalent of one months rent pursuant to section 51(1) of the Act. Therefore, I find the tenant is entitled to recover \$572.00 in compensation for the Two Months Notice issued on April 25, 2008.

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or

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part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit (plus any interest accrued on the original amount) to the tenant.

I find that the landlord did receive the tenants forwarding address in writing by April 29, 2009. As a result, the landlord had until May 14, 2009 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the tenants security deposit or apply to keep it, consequently, pursuant to section 38(6) of the *Act*, the landlord must pay the tenant double the amount of his security deposit. The tenant is entitled to a Monetary Order as follows:

Double the security deposit	\$550.00
Compensation for landlords two month notice	\$572.00
Compensation for loss of personal belongings	\$400.00
Total owing to the tenant	\$1,548.42

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,548.42**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 17, 2009.

Dispute Resolution Officer