



Dispute Resolution Services

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

DECISION AND REASONS

Dispute codes: MND, MNDC, FF

Introduction

This was an application by the landlord for a Monetary Order. The hearing was conducted by conference call. The landlord did not attend; he was represented by the named individuals. The tenant participated in the hearing.

Background and evidence

As recorded in a previous dispute resolution decision dated September 26, 2008 the tenancy began September 1, 1998 and ended July 1, 2008. In the previous decision the tenant was awarded compensation in the amount of \$2,000.00, being the equivalent of two month's rent. The landlord has now applied for a monetary order in the amount of \$3,000.00; he has claimed the following amounts:

- \$100.00 because the tenant moved out of the rental unit 3days late
- \$600.00 for damage to the back door alleged to have been caused by the tenant
- \$400.00 for removal of window coverings belonging to the landlord
- \$100.00 for a dining room light belonging to the landlord
- \$1,500.00 for a fridge, washer and dryer taken by the tenant
- \$300.00 for rubbish cleanup

The landlord purchased the rental property, a house in Richmond in April, 2008. At the hearing the landlord's representatives submitted that the contract of purchase and sale stipulated that all appliances, blinds, drapes and fixtures, including lighting were included in the purchase price. The landlord's representative submitted that this constituted evidence that the drapes and dining room light taken by the tenant belonged to the landlord.

The tenant testified that the window coverings and dining room light belonged to her; she installed them during the tenancy. There was an old hanging lamp in the dining room and it was left in the laundry room. The original window coverings were stored in the shed at the rental property. The tenant submitted pictures of the rental unit showing the original window coverings and the coverings that she installed after the tenancy began.

The landlord's representatives said that the tenant was late in returning keys to the property which were returned to the landlord on the 3rd or 4th of July. The tenant said in her submissions and testimony that she had moved by July 1, 2008 and met with landlord at his request on the 3rd or 4th of July. According to the tenant it was at this meeting that the landlord agreed to allow the tenant to keep the washer, dryer and fridge in exchange for the tenant's \$500.00 security deposit and accrued interest. The tenant testified that the appliances had been purchased by her in early 2007 for \$1,150.00. This was done with the consent of the former landlord and the tenant reduced the rent by the amount of the purchase. According to the landlord's representative the landlord never agreed to sell the appliances. In the written submission on behalf of the landlord, the landlord's agent said that when the tenant met with the landlord she proposed that she keep the appliances in return for the security deposit. The landlord said that he would think about it and let her know when all her items were removed and he picked up the remaining keys to the house.

The landlord claimed \$600.00 for damage to the house. According to the written submission provided by the landlord's agent, he said that: "we are not accusing the tenant of breaking the back door we are stating that the house was under the possession of the tenant and it was their responsibility and liability. He went on to say that if the tenant had returned the keys and given the owner possession on time this liability would not have occurred. The tenant's evidence was that she met with the landlord for the first and only time on July 4, 2008. They inspected the house together. The tenant stated her interest in keeping the appliances. When he asked what she was offering she suggested the security deposit. According to the tenant the landlord

agreed to the proposal and they shook hands, but no written agreement or bill of sale was prepared. The tenant said this is why she did not receive her security deposit back.

With respect to the landlord's damage claim, the tenant testified and stated in her written submission that she attended at the rental property on the evening of July 1st. The tenant saw that the rear door had been forced open. Her husband secured the rear door and they took down some "no dumping" signs that had been put on the house. The tenant called the landlord's agent early the next day; she told him of the break-in and warned him that there were squatters occupying a nearby house that was slated for demolition. The evidence established that there was a later break-in and the house was vandalized. The landlord has not included any estimates or bills for completed repairs. The evidence established that the house was first listed for sale by the landlord and was later demolished by him in November.

Analysis and conclusion

I did not have the benefit of any direct evidence from the landlord or from his agent. I found the evidence of the tenant to be direct and truthful.

Concerning the landlord's claim of \$100.00 for over-holding for three days, I accept the tenant's testimony that she moved out on the agreed day of July 1, 2008. She met with the landlord some three or four days later because that was the first opportunity offered to her. The landlord has provided no evidence of any loss. Contrary to the stated grounds for the two month Notice to End Tenancy given by the landlord, no relative ever occupied the rental property and it has now been demolished. I dismiss this claim as unfounded.

I deny the \$600.00 claim for damage to the back door; the damage was not caused by the tenant, nor was it due to any fault or want of care on her part in failing to lock or secure the premises. Unknown persons broke into the house when it was vacant. The tenant notified the landlord of the risk to the rental property and it was incumbent upon the landlord or his agent to take steps to protect and secure the property.

I accept the tenant's evidence that the window coverings and dining room light belonged to her. I accept her evidence that the original window coverings and light were left in the rental property; this claim is denied as well.

I accept and prefer the tenant's evidence to the submissions of the landlord concerning arrangements made for the appliances. It would have been preferable if this agreement was recorded in writing, but I find that the landlord did agree to sell the appliances to the tenant for the amount of her deposit. I do not accept the landlord's submission wherein it was stated that the landlord wanted time to think about the matter and would wait until keys were returned. I accept the tenant's testimony that the meeting on July 3rd or 4th was the final turn-over of the rental property to the landlord. I find that ownership in the appliances was transferred to the tenant in exchange for her security deposit and interest. This claim is denied.

With respect to the claim for \$300.00 for removal of rubbish, the tenant testified that she and her husband removed all such items. Her evidence was not contradicted at the hearing and no receipts for cleanup costs were submitted by the landlord; this claim is also denied.

The landlord has been unsuccessful on this application; the application is dismissed without leave to re-apply, consequently I decline to award the filing fee for this application.

Dated December 17, 2008.