

## **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 loss under the *Act* and for the return of her security deposit.

The landlord did not appear for the hearing. I accept the evidence of the tenant that the landlord was served with notice of this application and hearing by registered mail on June 06, 2009. Pursuant to section 90(a) of the *Act* I deem the landlord as having been served the documents on the fifth day after they were mailed or on June 11, 2009. I proceeded with the hearing in the landlord's absence.

The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Did the tenant suffer a loss due to negligence on the part of the landlord? Does the landlord have in his possession, the personal property belonging to the tenant? Is the tenant entitled to a monetary order for loss of her personal property and if so in what amount?

### **Background and Evidence**

The tenant submits that she lived in the above named rental unit with a co-tenant beginning January 27, 2009 for the monthly rent of \$375.00 and a security deposit of \$187.50. The tenant submits that her co-tenant, who she shared both the kitchen and bathroom with, is the son of the landlord who lives in the adjacent side of the duplex.

The tenant stated that on March 25, 2009 she returned home to find that the locks to the rental unit had been changed and her personal possessions were left outside. The tenant stated that she collected some of her possessions; however, the remaining items were left in a greenhouse outside at the rental property.

The tenant stated that she initially rented a storage locker which was not large enough to house all her belongings, and therefore she left some of her belongings behind, in the green house. In addition the tenant stated that she was living in a shelter and did not have any place to store her belongings. The tenant stated that on April 30, 2009, (one month later), she upgraded her storage locker to a larger one, but when she returned to pick up her belongings, there were not there. The tenant also stated that at the end of May, the landlord called her to request her to pick up her possessions and he finally personally delivered her items to her, sometime in June.

The tenant has filed a handwritten list of items that she stated were left behind and are now missing. This list includes jewellery and a watch inherited from her mother, a laptop, expensive perfumes, picture frames and other household items. The tenant filed a copy of her mother's will as evidence of owning the jewellery and watch, a copy of a receipt as proof of payment for the laptop and some photographs to show a ripped hanging closet shelf, a broken picture frame, a wrecked leather belt and some wires for her ipod. The tenant is claiming \$5943.63 as compensation for the listed items, moving and storage costs.

The tenant also stated that she gave the landlord her forwarding address on April 03, 2009 with a request for the return of her security deposit and did not hear back. The tenant is claiming the return of her security deposit in the amount of \$187.50.

The tenant also stated that she was evicted in an unlawful manner on March 25, 2009 and is claiming the prorated rent for the balance of the month in the amount of \$84.63.

### **Analysis**

In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,

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

The tenant bears the burden of establishing each claim on the balance of probabilities. The tenant must 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 tenant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the tenant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

In this case, the tenant has not filed adequate evidence to support her claim of the existence of the damage or the actual monetary amount of the loss. By the tenant's own admission, she did not pick up her belongings immediately due to problems with storing them. By not picking up her possessions in a timely manner the tenant has not established that she took reasonable steps to mitigate her damages. Accordingly, I find that the tenant's claim for compensation for her missing and damaged belongings does not satisfy all the components of the above test and is therefore dismissed.

Regarding the tenant's claim for the return of her security deposit, I find that the tenant gave the landlord her forwarding address on April 03, 2009 and did not hear back from the landlord. Section 38(1) of the *Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

I find the landlord failed to repay the security deposit in full, nor did he make an application for dispute resolution to retain a part of the security deposit within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposit.

Accordingly, I find that the tenant is entitled to double the security deposit (\$375.00). I also find that the tenant is entitled to the prorated rent for the days in March, that she was not permitted to reside in the rental unit (\$84.63).

Based on the undisputed testimony of the tenant, I find that the tenant has established a claim for \$459.63. Pursuant to section 67, I am issuing a formal order for payment in this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order for **\$459.63**.

Dated September 14, 2009.

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Dispute Resolution Officer