



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

Originally the applicant had requested an Order of Possession, and a monetary order totalling \$1210.00; however the applicant subsequently amended that application increasing the monetary claim to \$2274.00

Background and Evidence

An Order of Possession is no longer required because the landlord has possession of the rental unit.

The applicant testified that:

- The tenant has failed to pay both December 2009 rent and January 2010 rent.
- The tenant failed to comply with a mutual agreement to end tenancy in which she agreed to vacate the rental unit by 5 p.m. on the 15th of December 2009.
- On January 6, 2010 the power was cut off to the rental unit.
- On January 10, 2010 landlord entered the rental unit due to a smell coming from the rental unit and found food rotting in the fridge.

- On January 13-14 the landlord removed all of the tenant's belongings to storage, as he believed that the tenant had abandoned the rental unit.
- Due to the condition of the rental unit there was a need for substantial cleaning and carpet cleaning.

The applicant is therefore requesting an order as follows:

December 2009 rent	\$580.00
February 2010 rent	\$580.00
Removal of belongings and suite cleaning	\$325.00
Carpet cleaning	\$125.00
Storage fees	\$34.00
Filing fee	\$50.00
Total	\$2274.00

The applicant is therefore requesting that he be allowed to retain the full security deposit towards this claim and that a monetary order be issued for the difference.

The respondent testified that:

- She never abandoned the rental unit, and at the time that the landlord removed her belongings she was in the middle of slowly moving.
- She came home from work one day and her belongings were gone.
- The landlord knew where she worked and did not contact her to find out if she had moved out.
- The power may have been cut off however again the landlord did not contact her to inform her that the food in your fridge was rotting, had he done so she would have removed the rotting food and clean the fridge.
- She fully intended to vacate the rental unit, but did not expect the landlord to remove her belongings especially since there was a dispute resolution hearing already scheduled for today January 29.

The respondent therefore does not believe that she should have to pay any of the moving costs, storage costs or cleaning costs, as she fully intended to remove her belongings and clean the

rental unit before vacating. She also does not believe that she should have to pay for any rent after she was forcibly removed from the rental unit.

Analysis

It is my finding that the landlord exceeded his authority when he removed the tenant's belongings from the rental unit. The Residential Tenancy Regulations are very specific when it comes to abandonment of property in determining whether property has been abandoned or not, and in this case it is my finding that the landlord's determination that the rental unit had been abandoned was not reasonable under the circumstances.

The Residential Tenancy Regulations state:

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

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(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.

In this case the landlord, has not shown that the tenant had not occupied the rental unit for a period of one month, the tenant had not removed substantially all of her personal property, the tenant did not inform the landlord that she did not intend to return to the rental property and the landlord has not shown that the circumstances were such that the tenant could not reasonably expected to be returned to the residential property.

The landlord testified during the hearing that he knew she worked shift work, and perhaps he was just missing her, and I am not convinced of the landlord took reasonable steps to contact the tenant to find out whether or not she planned to return.

It appears that the landlord having entered the rental unit and found it to be in a poor state of cleanliness, decided not to wait until the dispute resolution hearing and took it upon himself to take possession of the rental unit without an Order of Possession.

Therefore it is my decision that I will allow rent only up until the date that the landlord removed the tenant's belongings and took possession of the unit. I therefore allow the full rent for December 2009, and one half the rent for January 2010, for a total of \$870.00.

I also order that the respondent bear the \$50.00 cost of the filing fee paid for this dispute resolution hearing.

I dismissed the claim for the remainder of January 2010 rent, and for February 2010 rent.

I also dismissed the claims for removing the tenants belongings, cleaning, carpet cleaning, and storage fees, because these are costs that the landlord may not have incurred had he not taken possession of the rental unit without the proper authority.



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Conclusion

I have allowed \$920.00 of the landlords claim and the remainder is dismissed without leave to reapply. I therefore order that the landlord may retain the full security deposit:

\$290.00

I further Order that the Respondent pay to the applicants the following amount:

\$630.00

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: January 29, 2010.

Dispute Resolution Officer