

DECISION

Dispute Codes MNDC

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation for damages and if so, how much?

Background and Evidence

This tenancy started approximately 5 years ago and ended on December 31, 2009 when the Tenant moved out.

The Tenant claims that she had her belongings ready to box up on December 31, 2009 and left the rental unit to find boxes and to have lunch. The Tenant said that while she was having lunch, she could see people moving around in her rental unit so she returned to find that the Landlord had bagged up her belongings and put them in the lobby of the rental property.

The Tenant said she removed most of the bags from the property but later discover that 5 pairs of jeans were missing along with 2 pictures of her brother (now deceased) and some posters. The Tenant also said that some of her posters had been ripped when they were removed from the walls by the Landlord or her agents.

The Landlord claimed that her records showed that the Tenant had only attended the rental property on two occasions following December 18, 2009 and that on the second occasion, December 30, 2009 she returned her key to the front desk clerk. The Landlord said that a routine check of all outgoing tenants' units was made after 1 p.m. on December 31, 2009 and any remaining belongings would have been bagged up, put in the lobby to be tagged and then put in the basement for storage. The Landlord claimed that the Tenant did not retrieve all of her belongings until last week.

The Landlord admitted that an inventory was not done of the Tenant's belongings but she argued that the Tenant said nothing about missing any belongings until the date of the hearing. Consequently, the Landlord said she had no knowledge of the belongings the Tenant said were missing.

Analysis

Section 37(1) of the Act says that “unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.”

Section 24 of the Regulations to the Act says that a Landlord may consider that a tenant has abandoned personal property if the Tenant leaves personal property on residential property that he or she has vacated after the tenancy agreement has ended if 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.

The Landlord argued that when the Tenant returned her key, the Landlord reasonably believed that she would not be returning to the rental unit. The Tenant denied that she returned her key on December 30, 2009 and claimed that she had it on December 31, 2009 when she returned to pack her belongings. The Landlord claimed that the Tenant asked for her key back later in the day on December 31, 2009 to check the rental unit. The Tenant’s memory of many of the events of her tenancy including those surrounding the specific events in question was very poor. Consequently, I find the night clerk’s report is more reliable, and accordingly find that the Tenant did return a key to the night clerk on December 30, 2009. As a result, I find that the Landlord reasonably believed that the Tenant had moved out.

The Tenant said she did not know what time she returned to the rental property on December 31, 2009. Consequently, I accept the Landlord’s evidence that she did not enter the rental unit until after 1 p.m. on December 31, 2009 to remove the Tenant’s belongings. As a result, I find that the tenancy had ended by the time the Landlord entered the rental unit and that the Tenant no longer had a right to quiet enjoyment or privacy as she alleged.

However under s. 25 of the Regulations to the Act, the Landlord had an obligation to make an inventory of and store any abandoned belongings of the Tenant’s having a total value in excess of \$500.00. I find that on a balance of probabilities that the value of the Tenant’s belongings (that she left on the rental property) had a value of less than \$500.00 and therefore I conclude that the Landlord did not have a duty under the Act to store the Tenant’s belongings.

Although the Tenant’s photographs of her brother may have had great sentimental value to her, I find that the Landlord did not have an obligation to safely store those of her belongings that she left in on the rental property after the tenancy ended. As a result, I find that there are no grounds for the Tenant’s application and it is dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed without leave to reapply. 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: April 20, 2010.

Dispute Resolution Officer