



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

In the course of the Hearing, the Tenant provided evidence indicating a dispute location that was not the same as the address noted in the application for dispute resolution. The Landlord confirmed this location as the dispute location and accordingly, the style of cause has been corrected to show the correct dispute address.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to return of the filing fee?

Background and Evidence

The tenancy of a cabin began on February 1, 2011 based on an oral agreement between the Landlord and Tenant and ended on February 8, 2011. Rent in the amount of \$600.00 was payable monthly. Prior to this tenancy, the Tenant had rented a different unit from the Landlord and both Parties agreed at the Hearing that the Landlord transferred the security deposit of \$300.00 paid for the previous tenancy to the current tenancy for the cabin. The Tenant states that the Landlord accompanied the Tenant to

the cabin, which is only accessible by water and when the Tenant objected to the state of the cabin, the Landlord became angry. The Tenant states that the cabin had no hot water or a bathroom and that access to the cabin could only be made by placing a long plank up to the floor of the cabin, which the Tenant states was as high as his nose. No move-in inspection was completed and the Landlord left after three days.

The Tenant states that shortly thereafter, he was informed by a neighbour that the place had been condemned. The Tenant further states that following the receipt of this information he found an old and tattered piece of paper in a drawer setting out that the cabin had been condemned with additional information warning that persons would be subject to significant fines should they occupy the cabin. The Tenant states that he left the cabin and returned to his Landlord asking for return of his rent and damage deposit or to move back into the previous unit he had rented from the Landlord but was refused both by the Landlord.

The Tenant further states that he had left a new and unopened set of Lagostina pots and pans at the rooming house with the Landlord who had agreed to keep them safe for the Tenant until the Tenant was able to pick them up and take them to the cabin. The Tenant states that when he asked for the return of the pots, the Landlord denied knowing where they were. The Tenant states that he provided the Landlord with his forwarding address in the application for dispute resolution served on February 28, 2011.

The Landlord denies that the unit had no hot water or bathroom but agrees that the cabin had been condemned in 2009. The Landlord states that he had the necessary permits allowing him to occupy the cabin in order to complete renovations and that although the Tenant was not working on the renovations the Landlord designated his right of occupancy to the Tenant. The Landlord further states that a final occupancy permit has not been issued for the cabin.

The Landlord states that he has a right to retain the security deposit in lieu of liquidated damages for the lack of notice the Tenant gave to end the tenancy at the cabin. The

Landlord denies agreeing to keep the pots safe at the location of the previous tenancy and that he had insisted the Tenant lock up the set of pots before he left that location. The Landlord states that the Tenant left these with other belongings in his previous unit and paid money to another tenant to clean that unit before he left. The Landlord states that he has no idea what happened to the pots. The Landlord states that he did keep a box of clothing and bikes for the Tenant, which he returned to the Tenant and suggests that this proves that he would not keep any of the Tenant's belongings.

The Tenant claims reimbursement of his rent, return of his damage deposit and compensation for the pots that the Tenant estimates are worth between \$400.00 and \$500.00. The Tenant did not waive a return of double the security deposit at the Hearing.

Analysis

Section 32 of the Act requires a landlord to provide residential property that complies with the health, safety and housing standards required by law. Given the Landlord's knowledge that the cabin had been condemned, I find that the Landlord acted in contravention of the Act by purporting to rent a unit not fit for habitation. Although the Landlord stated that he had a right to designate his right to occupy the cabin to the Tenant, I find that the Landlord did not provide sufficient evidence of such a right. Accordingly, I find on a balance of probabilities that the Tenant is entitled to return of the rent and security deposit paid for the cabin.

Section 38 of the Act further provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord failed to make an application for dispute resolution claiming against the security deposit, and failed to return the security deposit within 15 days of receipt of the

Tenant's forwarding address, I find that the Tenant is entitled to return of double the security deposit in the amount of \$600.00.

In relation to the claim for the pots, I accept the evidence of the Tenant that they were left in the safekeeping of the Landlord and that the Landlord did not return these pots. Given the statement of the Landlord that the Tenant should have secured the pots prior to leaving, I find on a balance of probabilities that the pots were new and valuable and that the Tenant is entitled to compensation for the loss of these pots in the amount of \$400.00. The calculation for the total monetary award is as follows:

Rent return	\$600.00
Double security deposit return	600.00
Compensation for loss of pots	400.00
Total Monetary Award	\$1,600.00

Conclusion

I Grant the Tenant a Monetary Order under Section 67 of the Act for the amount of **\$1,600.00**. If necessary, this order may be filed in the Small Claims Court and enforced 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: June 10, 2011.

Residential Tenancy Branch