



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, MNDC, MNSD, RPP

Introduction

This matter dealt with an application by the tenant to obtain a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, she seeks to recover double her security deposit, she seeks an Order for the landlord to return her personal belongings and seeks an Order to suspend or set restrictions on the landlords right to enter the rental unit. The tenant has filed to separate applications for these requests.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were sent to the landlord by registered mail on March 22, 2011. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing and the hearing proceeded in the landlords' absence.

Both parties were provided the opportunity to present evidence and make submissions. As the landlord did not appear the submissions were made by the tenant. On the basis of the evidence presented at the hearing, a decision has been reached.

Preliminary Issues

First off all it is my decision that I will not deal with the tenants application to set or suspend conditions on the landlords right to enter the rental unit. As the tenant has moved from the rental unit this section would no longer be required. Therefore this section of the tenants' application is dismissed without leave to reapply.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the return of her security deposit?
- Is the tenant entitled to an Order for the landlord to return her personal belongings?

Background and Evidence

The tenant testifies that this tenancy started on February 05, 2011. This was a month to month tenancy for herself and her co-tenant. The rent was agreed at \$900.00 per month and the tenant paid her share of the security deposit of \$237.50 on January 25, 2011.

The tenant testifies that her and her co-tenant had started to move their belongings into the unit on February 05, 2011 when they had an argument and decided that they could not possibly live together. The tenant testifies that her co-tenant told her she would stay somewhere else and would come back later to remove her belongings. The tenant testifies she then proceeded to hook up the phone, internet and cable in her name. On February 11, 2011 her co-tenant asked the tenant if she could come back to the unit to collect her belongings. The tenant stated she agreed to this and stayed at a friend's house that night to give her co-tenant time to remove her belongings. The tenant states her own belongings were mostly still packed in boxes and locked in her room.

The tenant testifies that she returned to the unit with her cats and two friends on February 12, 2011. She states she opened the door and her co-tenant was still in the unit and told her she could not come in. The tenant states she replied that she could come into the unit and her co-tenant told her "not according to me and the landlord". The tenant states she looked down the hall and saw her bedroom door was open and her belongings were gone. She states her co-tenant told her she had given her belongings to someone to throw by the side of the road at Jims house (a friend of the tenants). The tenant states her co-tenant then proceeded to put her cats out of the unit and locked the door. The tenant states she then called the police and the landlord.

The tenant testifies that the police did not want to get involved as they said it was a civil matter and when she tried to speak to the landlord the landlord said she could not hear the tenant as she was in her camper. Since then the tenant states she has tried to talk to the landlord but the landlord will not talk to her.

The tenant testifies that she went back to Jim's house but nothing was at the side of the road. The tenant agrees that the landlord did not remove her belongings from the unit and it was her co-tenant who had done this. The tenant seeks an Order for the landlord to return her personal belongings. If these have been disposed of the tenant seeks compensation to replace her belongings to the sum of \$2,700.00.

The tenant states she gave the landlord written notice to end her tenancy along with her forwarding address and a written demand for the return of her security deposit on February 15, 2011 (copy provided in evidence). The tenant states when she returned to the unit at the end of March, 2011 to collect any mail she saw her co-tenants dog in the window of the unit and her co-tenants boyfriends truck in the driveway. The tenant states she assumes the co-tenant is still residing in the unit. The tenant states the landlord has not returned her security deposit within 15 days and she seeks to recover double her deposit to the sum of \$475.00.

Analysis

The landlord did not appear at the hearing to dispute the tenants' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenant documentary evidence and affirmed testimony before me.

With regard to the tenants application for the landlord to return her personal belongings or for a Monetary Order for money owed or compensation for damage or loss if they have been disposed of; in this matter the tenant has testified that it was her co-tenant who removed her belongings from the unit not the landlord. The tenants letter to the landlord to end her tenancy states that the landlord gave the co-tenant permission to remove the

tenants belongings but this contradicts the tenants verbal testimony and I have no further evidence to show that the landlord was involved in the removal of the tenants belongings. When a dispute is between the tenants this is not covered under the *Residential Tenancy Act* and therefore I decline jurisdiction in this matter.

With regards to the tenants application for the return of double her security deposit; Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

I find that the tenant did give notice to the landlord to end the tenancy. In this event when it is a joint tenancy and one party gives notice then the tenancy in effect ends for both tenants. The landlord is at liberty to enter into a new tenancy agreement with the remaining tenant if she so chooses but must return the tenants security deposit as required under the *Act* for the original agreement. It is my decision that the landlord did receive this tenants forwarding address in writing by February 15, 2011. As a result, the landlord had until March 02, 2011 to return this tenants portion of the security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the tenants security deposit consequently, pursuant to section 38(6) of the *Act*, the landlord must pay the tenant double the amount of her portion of the security deposit. The tenant is therefore entitled to a Monetary Order to the sum of \$475.00.

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$475.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

With regard to the tenants application for the return of her personal belongings and for a Monetary Order for money owed or compensation for damage or loss; as explained above this is a dispute between the tenants and the *Residential Tenancy Act* would not apply in this instance. Therefore I decline jurisdiction in this matter and these sections of the tenants' application are dismissed without leave to reapply.

The tenant is at liberty to seek alternative legal remedy.

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 21, 2011.

Residential Tenancy Branch