



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, RPP

Introduction

This conference call hearing was convened in response to the tenant's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for the return of the security deposit; and for the return of the tenant's personal property.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to the return of personal property?

Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the tenancy started on August 1st, 2009. The rent was \$1500.00 per month (including utilities) and the tenant paid a security deposit of \$750.00. The tenancy ended January 31st, 2011 and it was not disputed that the tenant gave the landlord written notice to end the tenancy and her forwarding address.

The tenant testified that the landlord allowed her to continue to store certain items in the garage for a couple months because there was no storage facility at her new location. She said that when she tried to retrieve her belongings, the new tenant told her that she could not remove anything, and further told her son that the belongings were gone. The tenant said that of the belongings left behind, she wanted to keep a crib, a bay wagon, personal pictures, dishes and her son's weight bench and weights.

The landlord did not dispute that he allowed the tenant to store her belongings in the garage; he stated however that the tenant had left behind more than what she wanted to keep, and that he had asked her to come and sort these items in order to allow the new tenants, who took occupancy on March 25th, 2011, to move in their own belongings. The landlord said that he made four personal contacts with the tenant to remove her personal property from the garage by the end of July. The landlord said that the new tenants also made at least one request with the departing tenant, and that after these failed attempts the new tenants finally took her belongings to Big Brothers'.

Concerning the security deposit, the landlord stated that in December 2010, he reduced rent to \$1350.00 because the basement flooded, and that the tenant only paid \$1000.00 for that month. He said that the tenant asked him to take the balance owing from the security deposit and that they had reached a verbal agreement. The landlord stated that the tenant's damages to the unit along with dumping fees added to \$950.00.

The tenant argued that she never agreed to keep any amount from the security deposit, that \$1000.00 was what she believed the rent reduction was for that month, and that the landlord never told her about any balance owing. Concerning the stored items, she stated that she received two calls from the landlord in February and March, and a letter at the end of March.

Analysis

The regulation states that the landlord must store the tenant's property for a period of not less than 60 days. In this case the tenant had knowledge that her belongings were stored in a unit rented by new tenants, and acknowledged that she received requests to deal with them. I am satisfied that the landlord complied with the Act. The parties' testimony is at complete odds about the times these warnings were given; nevertheless I am not convinced on the evidence that the tenant was diligent in taking the necessary steps to attend promptly to separate her belongings and to remove those that she wanted to keep. Since the tenant's belongings were disposed of by the new tenants some 6 months after the end of the tenancy, I do not find the landlord liable, and it is no longer possible for the tenant to retrieve her property. At the hearing the tenant did not ascribe a monetary value for her lost property. For these reasons I dismiss this portion of her application.

Concerning the security deposit; Section 38(1) of the *Residential Tenancy 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 landlord received the tenant's forwarding address in writing. The landlord in this matter received the tenant's forwarding address in writing when the tenancy ended, and therefore he was obliged to either return the security deposit or make an application for dispute resolution.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

Since the security deposit was not returned and the landlord did not apply for dispute resolution as required by statute, the tenant is entitled to the return of double the amount of the security deposit.

Section 60(1) of the Act provides also for the landlord to make an application for dispute resolution over matters related to the tenancy within two years after the tenancy ends.

The landlord is entitled to claim monetary compensation against the tenant for any damages alleged, and to submit evidence at that time.

Conclusion

The tenant established a claim of \$750.00. Since she was successful, the tenant is entitled to recover the \$50.00 filing fee and pursuant to Section 67 of the Act, I grant the landlord a monetary order for the sum of \$800.00

This Order may be registered 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: August 15, 2011.

Residential Tenancy Branch