



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, OLC, RPP*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation under the *Act*. The tenant also applied for the return of her security deposit and for the return of her personal property. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, the landlord stated that she had not received any evidence from the tenant. She agreed that she had received the notice of hearing by registered mail. The tenant stated that she placed the evidence in the landlord's mailbox but did not have any proof of having done so. Since the tenant was unable to prove that she had served her evidence on the landlord, this evidence was not considered in the making of this decision.

Issues to be decided

Is the tenant entitled to compensation? Does the landlord have the tenant's personal belongings in her possession?

Background and Evidence

The tenancy started on September 22, 2011. There is no formal agreement in place, but both parties agreed that rent was \$1,350.00 payable on the first of the month. The tenant stated that she paid a security deposit in the amount of \$650.00. The landlord denied having received a security deposit. The tenant also stated that she paid rent for the balance of September and for October. Again the landlord denied having received any rent. The tenant stated that she had proof of having paid security deposit and rent which was filed with her evidence.

In early October, the landlord applied for an order to put an early end to the tenancy. This matter was heard on October 05, 2011 and the landlord's application for an early end to tenancy was dismissed. Despite not being granted an order of possession, the landlord proceeded to physically evict the tenant with the help of friends and the police. The tenant's items were placed outside on the lawn. The tenant's protests resulted in a scuffle and the tenant was arrested and taken away by police.

The landlord filed evidence by way of photographs of the tenant's belongings on the front yard. The landlord stated that the tenant came by and took items of value and left the balance behind. The tenant stated that her belongings were carelessly thrown out of the rental unit and left unprotected on the front lawn. The tenant is claiming compensation for the lost of her personal items.

The tenant is claiming the following:

1.	Return of damage deposit	\$650.00
3.	50 inch big screen television	\$500.00
4.	Three computer screens and tower	\$500.00
5.	HP Laptop	\$450.00
6.	Xbox originals (\$160.00) and Xbox 360 (\$300.00)	\$460.00
7.	Kitchen materials	\$250.00
8.	Groceries	\$265.00
9.	Two computer stands	\$100.00
10.	Living room set	\$350.00
11.	Child's bedroom set and toys	\$400.00
12.	Pine coloured bedroom set	\$600.00
13.	Bathroom accessories and make up	\$200.00
14.	To replace lost paperwork, pictures and other items	\$675.00
	Total	\$6,000.00

Analysis

The landlord's application for an order of possession to put an early end to tenancy was denied. Therefore the tenancy continued on. Despite this, the landlord physically evicted the tenant and placed her personal belongings on the front lawn unprotected from the elements and thieves. I find that the landlord acted in contravention of section 28 of the *Residential Tenancy Act* which states that the tenant is entitled to the exclusive possession of the rental unit subject only to the landlord's right to enter in accordance with section 29. Therefore I find that the landlord breached the *Act* and accordingly is liable for the tenant's losses.

The tenant's evidence that she paid rent and/or a damage deposit was not used in the making of this decision. Therefore the tenant has not proven her claim for the return of these items.

Upon review of the photographs filed by the landlord, I find that the personal property of the tenant which included a television, kitchen materials, computer stands, living room

set, child's bedroom set and toys, pine bedroom set and bathroom accessories were thrown on the front lawn in a careless manner and exposed to the elements. I find that the tenant did suffer the loss of these items and I will award the tenant an approximate estimated value of each item based on the condition of the item as depicted in the photographs and the verbal testimony of both parties.

I also find that on a balance of probabilities it is more likely than not that the tenant lost grocery items and personal paperwork and is therefore also entitled to compensation for the loss of these items.

I find that the tenant has established a claim as follows:

1.	Return of damage deposit	\$0.00
3.	50 inch big screen television	\$200.00
4.	Three computer screens and tower	\$100.00
5.	HP Laptop	\$0.00
6.	Xbox originals (\$160.00) and Xbox 360 (\$300.00)	\$0.00
7.	Kitchen materials	\$250.00
8.	Groceries	\$265.00
9.	Two computer stands	\$100.00
10.	Living room set	\$150.00
11.	Child's bedroom set and toys	\$200.00
12.	Pine coloured bedroom set	\$200.00
13.	Bathroom accessories and make up	\$100.00
14.	To replace lost paperwork, pictures and other items	\$200.00
	Total	\$1,765.00

Conclusion

Overall the tenant has established a claim of \$1,765.00. Accordingly, I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount. 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: November 16, 2011.

Residential Tenancy Branch