



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant proven entitlement for the return of rent for the period of June 17 to June 30, 2011?
2. Has the Tenant proven entitlement to monetary compensation for loss of his personal possessions?

Background and Evidence

The parties agreed they entered into a tenancy agreement that began on April 28, 2010 and ended by mutual agreement on June 17, 2011 at 6:00 p.m. Rent was payable on the first of each month in the amount of \$400.00 and the Tenant paid \$200.00 as the security deposit that was returned to the Tenant as part of the mutual agreement to end the tenancy.

The Tenant affirmed that he was ordered by the courts not to return to the rental unit because of dealing with another tenant and that is why he entered into the mutual agreement to end his tenancy with the Landlord on June 17, 2011. He paid his rent for the full month of June 2011 and is seeking the return of \$187.67 rent that was paid for the period of June 18 to June 30, 2011.

The Tenant advised that he is also seeking \$322.50 because he lost some of his possessions when he moved. He advised that there was police attendance when he

went to pick up his possessions at which time he found that some of his possessions had been moved to a different room for storage and he is of the opinion that some of his possessions went missing when the Landlord moved them.

The Landlord advised that shortly after the Tenant was ordered not to attend the rental unit he regularly called other residents and met up with them giving him his key so they could bring out some of his possessions. The Landlord stated they could not be responsible for the Tenant's possessions if he handed out his key to other tenants to enter his room. Also, their agreement was to end the tenancy as of 6:00 p.m. on June 17, 2011 so any possessions that were left inside the unit at that time were considered abandoned and bagged up as the Tenant returned his keys to the Landlord at that time.

The Desk Clerk confirmed she was on shift the day the Tenant attended to move out his possessions which was June 22, 2011. She advised there was a police officer who stood inside the rental unit by the front desk during the time the Tenant was moving and on several occasions she saw the Tenant's possessions stacked up on the sidewalk with no one around to watch them. Therefore the Landlord cannot be responsible for his lost items.

The Tenant confirmed he lent his key to other tenants to bring his possessions to him. He stated that he trusted these tenants and they would not steal his stuff. He argued that there was nothing left in his room when he moved out on June 22, 2011 and that he returned his last set of keys to the desk clerk on June 22, 2011.

The Landlord confirmed they found a new tenant who rented this unit for \$425.00 per month as of June 25, 2011. The new tenant paid five days prorated rent for June 2011 in the amount of \$106.25.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and

4. The party making the application did whatever was reasonable to minimize the damage or loss.

After careful consideration of the evidence before me I find there to be insufficient evidence to prove the Landlord violated the Act, regulation or tenancy agreement pertaining to the loss of the Tenant's possessions. Furthermore there is insufficient evidence to support the actual value or loss of these possessions. Accordingly, I dismiss the Tenant's claim for \$322.50 for loss of his possessions.

The *Residential Tenancy Policy Guideline # 16* provides that where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party. That is to say a tenant is expected to pay rent and the landlord is expected to provide the premises agreed to for the amount of rent that was paid.

Section 26 of the Act provides that a tenant must pay rent in accordance with the tenancy agreement. In this case rent is payable on the first of the month for occupancy for the entire month.

The evidence supports the Landlord re-rented the unit and collected prorated rent for the period of June 25 to June 30, 2011. Therefore the Landlord is not entitled to retain this Tenant's rent for the five day period the new tenant paid to occupy the unit. Accordingly, I award the Tenant the return of his rent for the period of June 25th to June 30, 2011, in the amount of **\$100.00**.

Conclusion

The Tenant's decision is accompanied by a monetary order in the amount of **\$100.00**. This Order is legally binding and must be served upon the Landlord.

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: December 12, 2011.

Residential Tenancy Branch