



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP, FF, O

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord return the tenant's personal property; and to recover the filing fee from the landlord for the cost of this application.

The landlord and the tenant both attended the conference call hearing on December 16, 2011, and the hearing was adjourned to January 10, 2012. Both parties again attended, gave affirmed testimony and were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order that the landlord return the tenant's personal property?

Background and Evidence

The parties agree that this fixed term tenancy began on May 1, 2011 and was to expire on May 1, 2012, however the tenant moved from the rental unit on October 30, 2011. Rent in the amount of \$800.00 per month was payable in advance on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 and a pet damage deposit in the amount of \$200.00. No move-in or move-out condition inspection reports were completed.

The parties also agree that a hearing was held before a Dispute Resolution Officer on September 8, 2011 under file number 778017 which resulted in a written Decision the same day, a copy of which the landlord has provided in advance of this hearing. The

Dispute Resolution Officer granted an Order of Possession and a monetary order in favour of the landlord by agreement of the parties, and left it to the parties to resolve the monetary issue; "It was agreed that if the tenant attends on the landlord and pays him the amount of \$761.00 before five o'clock in the afternoon on Friday, September 9, 2011, then both the order of possession and the monetary order will be null and void. If the tenant fails to so attend and pay the landlord may enforce the orders as he wishes."

The tenant further testified that the landlord had the tenant arrested on October 30, 2011 and while the tenant was at the police station, the landlord removed the tenant's belongings from the rental unit and put it on the lawn. When released, the police officer drove the tenant home to get the tenant's vehicle and the tenant saw the landlord and another gentleman moving the tenant's belongings outside. The tenant's father and brother-in-law were called, and the tenant's father spoke to the landlord. The landlord told the father that no access could be gained to remove any items belonging to the tenant, and told the father that the issue was none of his business and that all items would be put on the lawn. The tenant has been ordered to have no contact with the landlord, but the landlord kept a computer, an LCD television and a stereo as hostage and advised that the items would not be released until the tenant had removed the other belongings from the lawn. The next day the tenant got a truck and went to the rental unit to retrieve the items from the lawn. It had rained over night and the belongings were wet. On November 1, 2011 the tenant's brother-in-law got ahold of the landlord and the other items were returned, with the exception of lap-top which is still missing. The tenant testified that the lap-top is a Sony model and costs about \$1,500.00. During the landlord's move of the tenant's belongings, a crystal wine glass was broken. The tenant had a set of 4, and the replacement cost is \$350.00. Further, the landlord piled a table on top of the tenant's leather couch and it ripped. The tenant claims \$700.00 for its replacement.

The tenant further testified that the landlord charged the tenant \$250.00 in late fees that were not agreed to in the tenancy agreement.

The tenant further testified that on October 31, 2011 the tenant provided the landlord with a forwarding address in writing which was delivered by the tenant's friend. The friend provided a letter to that effect for this hearing. The deposits have not been returned to the tenant and the tenant claims double the amount of the security deposit and pet damage deposit, or \$1,200.00.

The tenant further testified that the arrears of \$761.00 were paid to the landlord as ordered by the Dispute Resolution Officer on September 8, 2011, however that payment was not received by the landlord until September 12, 2011. The tenant also paid

October's rent in 3 instalments, the first being on October 7, 2011. The landlord also requested an additional \$150.00 for late fees but the tenant refused to pay it.

On October 27, 2011 the landlord gave the tenant's friend a note stating that the tenant had to move on October 28, 2011. The tenant called the landlord on October 27, 2011 and advised that the tenant could not move until the 31st and promised to clean the rental unit. The landlord agreed. Then on October 28, 2011 the tenant spoke to the landlord again to confirm that the tenant would move on October 31, 2011 and the landlord again agreed. Then on October 30, 2011 the landlord called the police saying that the tenant phoned the landlord 50 times and threatened the landlord. The tenant testified to calling the landlord once only. The tenant stated that the landlord made up a story that the tenant had threatened the landlord and had the tenant arrested.

The tenant also testified that the landlord never issued rental receipts except for the one issued in August. The landlord had an Order of Possession in September, 2011, and if the tenant had not paid the rent, the landlord could have acted on it. The landlord would have acted on the order if rent hadn't been paid.

The landlord testified that on October 30, 2011 the tenant threatened the landlord and someone tried to get in the landlord's door. The landlord also denies that anything rude was said to the tenant's father or brother-in-law.

The landlord further testified that a letter dated October 25, 2011 was given to the tenant wherein the landlord advised the tenant that the tenant was not current with arrears, and the tenant needed to be out of the rental unit by October 27, 2011. The landlord provided a copy of the letter prior to the hearing. When the landlord gave the letter to the tenant, the tenant looked half asleep, but later called the landlord and threatened to bring friends and hurt the landlord and burn down the house. The landlord called the police, who asked if the landlord wanted to press charges or have the police simply keep the peace. The landlord stated that the police only needed to keep the peace, but the tenant would not answer the door.

On October 26, 2011 the tenant called the landlord politely and said the rental unit would be vacant on October 30, 2011 and the landlord agreed. On October 30, 2011 the landlord called the landlord's brother to witness a further conversation with the tenant. The landlord asked the tenant what time the tenant would be moving, and the tenant swore at the landlord and again threatened to hurt the landlord and burn down the house. The landlord called the police again and told the police that charges should

be laid against the tenant. The police told the landlord to remove the tenant's items from the rental unit.

The landlord further denied that the tenant paid \$761.00 in September or that the tenant paid any rent for October, 2011. August 18, 2011 was the last rent money received from the tenant, and the landlord has provided a receipt in the amount of \$800 as evidence. The landlord got smaller portions of \$50.00 or \$100.00, but doesn't remember fully. The landlord also provided a copy of a note made by the tenant dated September 14, 2011 which is an agreement by the parties that the landlord would allow the tenant to remain in the rental unit until the end of October, 2011 if rent in the amount of \$300.00 for September was paid on September 15, 2011 and the October rent is paid on or before the 31st of September. The landlord did not sign the agreement.

The landlord testified that the belongings of the tenant were carefully placed on the deck outside the rental unit, not on the lawn, and all valuables were kept at the front door inside the landlord's house to protect it from the weather. The other items were kept outside with a tarp over them, and no items were damaged at all.

The landlord further denies that the tenant provided a forwarding address at all, nor did the landlord collect any late fees from the tenant, and stated that the tenant has fabricated that testimony.

The landlord's witness testified to being with the landlord when a letter was given to the tenant. Later the landlord called the witness again asking for help, and the witness helped the landlord move the tenant's belongings from the rental unit carefully and items were placed under a tarp. The tenant showed up with the tenant's father and another person and some items were retrieved. The parties were polite to one another.

Analysis

The parties in this case entered into a tenancy agreement and an issue arose with respect to unpaid rent. In the evidence before me, I am convinced that the tenant felt that an agreement had been made wherein the tenant would move at the end of October, 2011, but the tenant mistakenly thought there were 30 days in that month, and the landlord held the tenant to October 30, 2011 despite the fact that October has 31 days. I make that finding due to the note provided to the landlord by the tenant on September 14, 2011 wherein the tenant wrote that rent would be paid before the 31st of September, and September only has 30 days.

The *Residential Tenancy Act* prohibits a landlord from removing any items from a rental unit that is subject to a tenancy and from entering a rental unit subject to a tenancy for any reason unless:

- the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice, which must include the purpose for entering, which must be reasonable and the date and time of entry which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- the landlord has an order of the director authorizing the entry
- the tenant has abandoned the rental unit;
- an emergency exists and the entry is necessary to protect life or property.

In the evidence before me, none of those reasons existed during this tenancy, and I find that the landlord had no right to enter the rental unit or remove any of the tenant's belongings.

The tenant has applied for recovery of broken or missing items, however, in order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate, or reduce such damage or loss.

In this case, having found that the landlord had no right to enter the rental unit, and in the absence of any denial from the landlord that the tenant's belongings were removed from the rental unit by the landlord, I find that the tenant has established elements 2 and 4; the tenant was subject to a no contact order with the landlord and returned the day after to retrieve the items. I am not satisfied, however, that the tenant has established elements 1 or 3. The landlord has denied any broken or missing items, and the tenant has failed to establish that any were missing or broken. The onus is on the claiming party to prove such a claim. Further, I have no evidence before me of the value of any of the items that the tenant claims are missing or broken. Therefore, the tenant's application cannot succeed.

The landlord currently holds a security deposit of \$400.00 and a pet damage deposit of \$200.00. The tenant testified that a forwarding address was provided to the landlord on October 31, 2011 and provided a copy of that note for this hearing. The landlord has denied ever receiving that note or a forwarding address at all. The parties also agree that no move-in or move-out condition inspection reports were completed, which extinguishes the landlord's right to claim against the deposits for damages. The landlord has not made a claim against the tenant, but the onus is on the tenant to prove that the landlord received the forwarding address in writing before the tenant can be successful in receiving an award of double the amount of the deposits. The tenant provided a letter from a friend who delivered the note to the landlord, but that person was not present to testify at this hearing or subject to cross examination by the landlord. Therefore, I find that the tenant is entitled to recover from the landlord the \$400.00 security deposit and the \$200.00 pet damage deposit which was collected by the landlord at the outset of the tenancy.

Since the tenant has been partially successful with the application before me, the tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$650.00. This order is final and binding on the parties and may be enforced.

The tenant's application for an order that the landlord return the tenant's personal property is hereby dismissed without leave to reapply.

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: January 19, 2012.

Residential Tenancy Branch