



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

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 and for a monetary order for return of all or part or double the amount of the pet damage deposit or security deposit.

The parties both attended the conference call hearing and gave affirmed testimony. The tenant was represented by an advocate and called one witness who gave affirmed testimony. The parties provided evidence in advance of the hearing, however the landlord's evidence was not provided to the tenant. The parties were given the opportunity to cross examine each other on the testimony and evidence provided, all of which has been reviewed and is considered in this Decision with the exception of the landlord's evidence package that was not provided to the tenant.

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 a monetary order for return of all or part of the pet damage deposit or security deposit, or double the amount of such deposits?

Background and Evidence

This month-to-month tenancy began on August 1, 2011. Rent in the amount of \$500.00 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 \$250.00.

The tenant testified that in mid-June, 2011 the landlord was given verbal notice of the tenant's intention to vacate the rental unit by the end of July, 2011. The tenant arrived home on or about July 5, 2011 to discover that pictures that had been on the wall were removed and on the floor, and the tenant found a note from the landlord calling the

tenant names and ordering the tenant to move out. The tenant took the week to pack, but the landlord locked the tenant out of the rental unit in mid-July, 2011. The landlord had changed the deadbolt locks on both doors to the rental unit. Then the landlord sent a text message or called the tenant's friend saying that the locks had been changed and all the tenant's belongings were thrown outside. It had rained, and the tenant called a parent to pick up the items that were outside, but the tenant's dresser was damaged by the rain. The landlord also sent the tenant about 5 voice mail messages stating that the landlord would ensure that the tenant could not rent another place. The top of the dresser came off and a drawer was warped. The face of another drawer came off as well.

During cross examination, the tenant testified that the bathroom door had been damaged and the tenant had removed it to replace it, but was locked out of the rental unit before the door was replaced. Also, the pictures on the walls were covering 2 small holes that the tenant hadn't told the landlord about.

The tenant stated that the landlord was provided with the tenant's forwarding address in writing by regular mail on July 26, 2011. A copy of the letter was provided for this hearing. It is dated July 26, 2011 and shows that it was addressed to the landlord and signed by the tenant's legal advocate.

The tenant claims double the amount of the security deposit in the amount of \$500.00, half a month's rent in the amount of \$250.00, and \$300.00 for replacement of the damaged dresser.

The tenant's witness testified to being a parent of the tenant and received a phone call from the tenant who was working afternoon shift at the time. The tenant had told the parent that the landlord had called the tenant's friend advising that the tenant's items had been thrown out of the rental unit and the locks to the rental unit had been changed. The witness described the weather as a torrential downpour at the time. The witness loaded up the tenant's boxes of items and the tenant's dresser into the witness' truck and took the items home to a covered carport. The dresser bubbled, and the boxes had to be thrown in the dump due to the rain damage. While the witness was at the rental unit, the landlord cruised around a couple of times, and then the witness realized that it was the landlord. The next day, the tenant arrived to retrieve the belongings and the dresser was not useable; the bottom had soaked up a lot of water and fell out; drawers were warped.

When asked about the date that the witness attended to retrieve the items, the witness stated that it was about July 15, 2011, before the Billy Barker Days annual festival. The

landlord asked if it was not July 25, 2011, and the witness replied, that it was before that; approximately the 15th of the month.

The landlord testified that in March, 2011 the landlord attended the rental unit to replace a septic tank float, and used the tenant's bathroom while there. The landlord noticed that the door to the bathroom was missing and asked the tenant about it. The tenant responded that the door would be replaced. The rental unit is a suite in a duplex, and the landlord had spoken to the tenants next door who told the landlord that they had heard crashing, smashing and fighting, and told the landlord to expect damage. Each month thereafter the tenant promised to replace the bathroom door, but failed to do so.

The landlord further testified that on June 24, 2011 the tenant called to advise that the tenant would be moving out at the end of July. The landlord placed an advertisement in the Bargain Hunter. On July 7, 2011 the tenant called the landlord stating that the tenant had moved and wanted the security deposit back in addition to half a month's rent. The landlord responded that new tenants had to be found and asked if the rental unit had been cleaned or if the bathroom door had been replaced. The tenant replied that the door had not been replaced and the old door was in the shed. The landlord advised the tenant that doors were on sale, and the tenant should pick one up while the prices were low.

On July 14 or 15, 2011 the landlord called the tenant asking if the landlord could show the rental unit to a perspective renter. The tenant agreed, and while the landlord was in the rental unit the landlord removed pictures from the walls and found holes behind them; one in the living room and one behind the bathroom door. The landlord tried to pull a poster off the wall in the bedroom and it tore in half. The landlord testified that the poster was worthless.

The landlord was trying to rent the rental unit for the middle of July, 2011 but was not able to and the landlord told the tenant that the tenant had a lot of nerve requesting half a month's rent; the unit was not clean, there were damages and still no door. Again, the tenant said he'd fix the door.

The landlord called the tenant the following week, and again after that, asking about cleaning and repairs by the end of the month, but the tenant wouldn't return the landlord's calls. On July 25 or 26 the landlord called again, was upset, and told the tenant the tenant's belongings would be outside. The landlord testified that the tenant's belongings were placed outside under the over-hang of the roof. The landlord then went to the neighbour's and told them that the landlord would return to repair the damages, and another fellow showed up to pick up the tenant's belongings. It was not

raining when the landlord witnessed the fellow pick up the tenant's items. The locks were changed on July 26, 2011.

Analysis

In this case, I find that both parties are in breach of the *Residential Tenancy Act*. The tenant did not provide the landlord with a month's notice to vacate in writing. Further, a landlord is not permitted under the *Act* to change the locks on a rental unit while the tenant remains in possession. The parties do not dispute that the landlord changed the locks and put the tenant's belongings outside, although the parties do not agree on the date. If the landlord was concerned about damages to the rental unit, the landlord had other courses of action that would be permitted under the *Act*.

The *Residential Tenancy Act* also states that a landlord must complete a move-in condition inspection report before a tenant moves into a rental unit, and must complete a move-out condition inspection report at the end of a tenancy, both in the presence of the tenant. If the landlord fails to do so, the landlord's right to claim against a security deposit for damages is extinguished. In this case, I find that the landlord did not cause either inspection to take place, and therefore I find that the landlord's right to claim against those deposits is extinguished.

The *Act* further states that a landlord must return to the tenant the full security deposit or pet damage deposit within 15 days of the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing. The tenant testified that the landlord was provided a forwarding address in writing which was sent by regular mail on July 26, 2011. The landlord did not dispute that testimony. The landlord also testified that the locks to the rental unit were changed on July 25 or 26, 2011. I find that since the tenant provided the forwarding address by regular mail, that mail is deemed to have been received by the landlord on July 31, 2011. The landlord has not returned any portion to the tenant, and therefore, the tenant is entitled to a monetary order for double the amount of the security deposit.

With respect to the tenant's claim for half a months' rent, the landlord testified firstly that the tenant was locked out of the rental unit on the 25th of July, 2011, and then later in testimony stated it was on July 26, 2011. The tenant testified that it was in mid-July, 2011. The witness testified that it was about the 15th of July, 2011 and recollects that because it was before Billy Barker Days. I find that the date that the tenant was locked out of the rental unit was July 15, 2011. Neither the landlord nor the tenant has provided me with any evidence to substantiate the exact date, however, I accept the

testimony of the witness because the witness has provided reasoning for recollecting the date.

There were no rental arrears, according to the testimony of the parties at the time the landlord changed the locks to the rental unit, and therefore, I find that the tenant is entitled to recovery of one half a month's rent paid in the amount of \$250.00.

With respect to the tenant's claim for the damaged dresser, the tenant has not provided me with any evidence with respect to the cost. The tenant claims \$300.00 but has not given an estimate, a photograph, an advertisement or a receipt to substantiate that amount. In order to be successful in a claim for damages, the party must satisfy the 4-part test for damages, being that the damage or loss occurred, that it occurred as a result of the landlord's breach of the tenancy agreement or the *Act*, the amount of the damage, and what the tenant did to mitigate the damage or loss. In this case, I am satisfied that the tenant has established that the damage or loss exists and that it exists as a result of the landlord's breach of the *Act*, but I am not satisfied with respect to the amount. I refer to Residential Tenancy Policy Guideline 16, "Claims in Damages," which states:

"An arbitrator may only award damages as permitted by the Legislation of the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages," which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right."

In this case, the landlord infringed upon the tenant's legal right, and therefore I find that the tenant is entitled to a minimal award, and I find that the tenant's claim for \$300.00 is justified for the inconvenience of being thrown out of the tenant's home along with the tenant's items. The items may or may not have had any significant value, but the tenant ought not to have been thrown out of the rental unit contrary to the *Residential Tenancy Act*.

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 \$1,050.00.

This order is final and binding on the parties and may be enforced.

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: March 01, 2012.

Residential Tenancy Branch