



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

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.

The tenant participated in the hearing and provided affirmed testimony. His agent stated that he served the Notice of a Dispute Resolution Hearing to the landlord by way of registered mail sent on December 22, 2011, and provided a Canada Post tracking number. The tenant's agent stated that he also attended at the hotel, where the landlord conducts business, and left the notice and package of evidence at the reception desk. The landlord did not participate and the hearing proceeded in the landlord's absence.

Issue(s) to be Decided

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

Background and Evidence

The rental unit consists of a room in a downtown east side hotel. The tenancy started in February 2009 and ended in May 2011. The rent started at \$425.00 per month and was eventually reduced to \$375.00. The tenant paid a security deposit of \$212.50.

The tenant testified that in May 2011, the attendant in the hotel's reception told him that his mother passed away and that his job at the hotel was terminated. He stated that when he returned from the morgue, he was locked out of his rental unit, and that he was only allowed 10 minutes to remove his belongings. The tenant stated that he went to his room only to find that it was already empty with the exception of a few minor items. Part of the missing items included a 52" TV, a stereo, a fridge and his clothing.

The tenant said that the landlord paid him \$50.00 for a 12 hour shift as doorman, and that the landlord owes him 120 hours, which is the equivalent of 10 shifts at \$500.00. The tenant said that he was in the streets for 3 months before he could find new accommodations. The tenant said that the landlord did not return his security deposit.

The tenant's monetary claim is \$8000.00. The tenant's agent submits that the tenant was evicted illegally, and claims aggravated damages. In his evidence package, the tenant's agent provided two similar Residential Tenancy Branch decisions over the same landlord at the same location, with similar claims; in one decision the tenant was awarded \$6000.00, and in the other the tenant was awarded \$1593.75.

Analysis

I accept the tenant's undisputed testimony that he served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the landlord knew, or ought to have had knowledge of the date scheduled for this hearing.

The tenancy lasted approximately 25 months during which the tenant paid approximately \$10,000.00 in rent. The tenant's claim is almost what he actually paid for rent throughout the tenancy.

I have reviewed the previous decisions submitted by the tenant's counsel; I find that they differ in that the claims in both matters pertained to the condition of the unit. While

the evidence included documentary evidence regarding these similar conditions, nothing was presented orally on this subject; the tenant's testimony centered on how he was inconvenienced by being evicted illegally, and his missing personal property. Despite the living conditions, I heard no submissions that they were the primary cause for ending this tenancy. Further, Section 7(2) of the *Act* states in part that a party who claims for compensation for damage or loss must do whatever is reasonable to minimize the damage or loss. The tenancy lasted about 25 months; I do not find that making an application some two years later concerning the condition of the unit objectively reflects on the tenant's obligation to minimize the loss. A remedy for the tenant would have been to seek assistance through dispute resolution to resolve the issue if the landlord failed to attend to the problems as they occurred.

The two previous decisions submitted by the tenant's counsel thoroughly explain the grounds on which monetary awards for damages are permitted. An arbitrator may award aggravated damages for losses such as property, money, services, as well as non-pecuniary losses for the loss of entitlements to comfort or quiet enjoyment afforded under the *Act*.

I do accept that the eviction was illegal, that the tenant lost valuable belongings, and that he was significantly inconvenienced.

With this in mind I will award the tenant the following:

- For the loss of personal belongings, in the absence of receipts or any other supportive evidence I award the tenant \$2000.00.
- For living in the streets three months before finding new accommodations I grant the tenant three months' rent at \$375.00 per month totalling \$1125.00.
- I award the tenant the loss of his security deposit of \$212.50.

I have no jurisdiction to consider the tenant's submissions concerning his loss of wages and employment arrangements with the landlord.

Conclusion

Pursuant to Section 67 of the Act, I grant the landlord a monetary order for the balance of \$3337.50.

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: March 01, 2012.

Residential Tenancy Branch