



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, RPP, O

Introduction

This hearing was convened by way of conference call in repose to the tenants application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the return of the tenants security deposit; for an Order for the landlord to return the tenants personal property and other issues.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, and were handed personally to the landlord in the presence of a Police Officer.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to recover the security deposit?
- Is the tenant entitled to an Order for the landlord to return the tenants personal property?

Background and Evidence

The tenant testifies that this month to month tenancy started at the end of March, 2012. The tenant testifies that she agreed to rent a Winnebago parked alongside the landlord's house for a monthly rent of \$625.00. Rent was due on the first day of each month. The tenant testifies that she paid a security deposit of \$300.00 at the end of March, 2012.

The tenant testifies that the landlord told the tenant she had to leave the Winnebago without providing proper notice to end the tenancy. The tenant testifies that on April 13, 2012 she returned to her unit to find the landlord removing all her belongings. The landlord put the tenant's belongings in a trailer and locked it. This prevented the tenant getting basic necessities for living such as clothes. The tenant testifies the landlord went through her belongings so the tenant went to the police and filed a complaint. The tenant has not provided a police file number in evidence but does name the police officer who the tenant claims went to speak to the landlord. The tenant testifies the landlord told the police he had to remove the tenant's belongings because of an electrical fire in the Winnebago. The tenant testifies that there was no evidence that an electrical fire occurred and when the tenant went to the Winnebago later the lights were all on. The tenant testifies that she had to live in a van with her one year old child as she had nowhere else to live at the time

The tenant testifies that she filed an application with the Residential Tenancy Office on April 16, 2012 after advice from the police. The tenant testifies that she returned to the unit on April 20, 2012 and was able to serve the landlord with the hearing documents and photographic evidence along with a note containing the tenants forwarding address in writing. The tenant testifies that the police accompanied the tenant on this occasion and the tenant was Able to retrieve most of her belongings with the exception of a Kayak and two fishing rods.

The tenant seeks to recover her security deposit and seeks to recover the rent paid from April 13, 2012 to April, 30, 2012. The tenant also seeks an Order for the landlord to return the tenants kayak and two fishing rods.

Analysis

The landlord did not appear at the hearing to dispute the tenants claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and affirmed testimony before me.

With regard to the tenants claim to recover the security deposit; Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on April 20, 2012. As a result, the landlord had until May 05, 2012 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and there is no evidence to show the landlord has filed an application for Dispute Resolution to keep the deposit. Therefore, I find that the tenant has established a claim for the return of double the security deposit pursuant to section 38(6)(b) of the *Act* and will receive a Monetary Order to the sum of **\$600.00**.

With regard to the tenants claim to recover rent paid from April 13, 2012 to April 30, 2012; I find the landlord did not serve the tenant with a Notice to End Tenancy under s. 46, s. 47, s. 48, s. 49 or s. 49(1) of the *Act*. From the undisputed testimony of the tenant I also find the landlord acted unlawfully in removing the tenant's belongings from the rental unit and effectively ended the tenancy on April 13, 2012. Therefore, I find the tenant is entitled to recover the rent paid from April 13, 2012 to April 30, 2012 (17 days at \$20.83 a day) to the sum of **\$354.16**. The tenant states she did not calculate the sum required correctly on her application. The tenant will receive a Monetary Order for this amount pursuant to s. 67 of the *Act*.

With regards to the tenants claim for an Order for the landlord to return the tenants personal belongings; from the undisputed testimony of the tenant I find the landlord has not returned the tenants kayak and two fishing rods. I HEREBY ORDER the landlord to return these items to the tenant within two weeks of receiving this decision. If the landlord fails to do so the tenant is at liberty to file an application for compensation for the loss of her personal belongings.

A Monetary Order has been issued to the tenant for the following amount:

Double the security deposit	\$600.00
Return of rent for April	\$354.16
Total amount due to the tenant	\$954.16

Conclusion

I HEREBY FIND in favor of the tenant's revised monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$954.16**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the landlord to return the tenants kayak and two fishing rods within two weeks of receiving this decision.

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: May 07, 2012.

Residential Tenancy Branch