



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing him to retain the security deposit. Both parties participated in the hearing.

The landlord sought to raise a number of issues which had already been decided in a previous decision rendered on January 16, 2012. The landlord applied to the Residential Tenancy Branch for a review of that decision and was denied in a decision issued on February 15, 2012. The landlord proceeded to take the matter to the Supreme Court in a petition for a judicial review and in oral reasons issued on June 28, 2012, Mr. Justice McEwan, the petition was dismissed. The January 16, 2012 decision has not been set aside and therefore it is binding upon the parties.

Because the January 16 decision addressed the claims with respect to a bicycle, a vent and the security deposit, I have not addressed those claims in this decision. The application by the landlord to retain the security deposit is therefore dismissed without leave to reapply.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

Most of the facts are not in dispute. The rental unit is located in a home which the landlord also occupies and the tenant accessed the rental unit through the garage door.

The tenant moved her belongings out of the unit on January 25, 2012 and the landlord asked her for the keys to the unit at that time. The tenant had been in touch with the Residential Tenancy Branch (the "RTB") and had understood the direction given from them to be that she should not return the keys until the landlord had paid her \$930.00, which was the amount of an outstanding monetary order against him in her favour which

was granted by this office on January 16, 2012. The tenant believed that this exchange should take place at the RTB office and directed the landlord to bring money there to exchange it for the keys. Both parties attended at the RTB office and were advised that the RTB does not exchange items on behalf of parties.

The tenant testified that when she went to the RTB office on January 26 to exchange the keys for money and was told that the RTB did not provide this service, she was then told to tape a demand letter and the monetary order on the door of the rental unit together with the keys to the unit. The tenant followed what she believed to be the instructions of the RTB.

The landlord testified that when he returned to the home in the evening of January 26, he discovered the demand letter and order but did not see keys. When he awoke the following morning, he found the garage door open and items missing from the garage. The landlord reported this to the police on January 26 and advised the police that the tenant still had keys to the unit as he was not aware on that date that the tenant had taped the keys to the door.

The landlord testified that the first time he discovered that the tenant had taped the keys to the door of the unit was on February 17 when he spoke with her on the phone and she advised that she had taped the keys to the door on January 26.

The landlord testified that three items were stolen from his garage in January. The first was a commercial lawnmower which he purchased in 2010 for \$1,499.68, the second was a hedge trimmer which he purchased for \$480.48 in 2008 and the third was a line trimmer which he purchased in 2008 for \$502.88. The landlord further testified that because the police told him that the door was opened without any forced entry by someone who apparently had a key, he changed the locks on the rental unit at a cost of \$164.05. The landlord seeks to recover these losses from the tenant.

Analysis

The only claim brought by the landlord which has not yet been adjudicated is the claim for the value of the items stolen from his garage and the cost of changing locks. I have therefore limited my decision to this issue.

Although the tenant claimed to have received specific instruction from the RTB that she was to tape the keys to the rental unit to the door of the unit, I find it more likely than not that the tenant misunderstood the instructions in the same way that she misunderstood the previous instructions to arrange for the RTB to exchange the keys for money. I find that the tenant should reasonably have known that if the keys were taped to the outer

door of the rental unit in full view of passersby, she was exposing the landlord to a risk of a break-in. I find that the tenant must be held responsible for the loss of the lawn maintenance equipment.

As the tenant did not dispute that the landlord had owned the items which he claims were stolen and did not dispute the age or value of the items, I accept that the landlord's testimony regarding his ownership of the items, their loss and their value is accurate.

I find that each of the items had a useful life of approximately 7 years and I find that the mower had 5 years of useful life remaining and that the hedge trimmer and line trimmer each had 3 years of useful life remaining. I find that the landlord is therefore entitled to recover $\frac{5}{7}$ or 71% of the value of the lawn mower and I award the landlord \$1,064.77. I find that the landlord is entitled to recover $\frac{3}{7}$ or 43% of the value of each of the trimmers and I award the landlord \$206.61 for the hedge trimmer and \$216.24 for the line trimmer.

I find that the tenant must also be held responsible for the cost of the lock replacement and I award the landlord \$164.05.

As the landlord has been substantially successful, I find that he should recover the \$50.00 filing fee paid to bring his claim and I award him \$50.00.

Conclusion

In summary, the landlord has been successful as follows:

Lawn mower	\$1,064.77
Line trimmer	\$ 216.24
Lock replacement	\$ 164.05
Filing fee	\$ 50.00
Total	\$1,701.67

I grant the landlord a monetary order under section 67 for \$1,701.67. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. As the tenant has an outstanding order for \$930.00, the parties are encouraged to set off the awards as against each other, leaving a balance of \$771.67 payable by the tenant to 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 10, 2012

Residential Tenancy Branch