



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPT MNSD MNDC

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38;
- b) An Order of Possession for the Tenant; and
- c) A monetary order for four months rent as compensation for illegal eviction plus \$1400 to replace belongings

SERVICE

The landlord did not attend the hearing. The tenant gave sworn testimony that she had served the landlord with the Application for Dispute Resolution by putting it in her mailbox. I find the Application is deemed to be served in accordance with section 89(2) of the Act for the purpose of obtaining an Order of Possession but is not sufficiently served pursuant to section 89(1) for the purpose of obtaining a monetary order.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that she was illegally evicted and she is entitled to compensation for that and also to the return of double the security deposit according to section 38 of the Act?

Background and Evidence

The landlord did not attend the hearing but is deemed to be served with the Application/ Notice of Hearing for the purpose of obtaining an Order of Possession only. The tenant was given opportunity to be heard, to present evidence and make submissions. The tenant said she had paid a security deposit and was paying rent of \$800 a month through the Ministry. She claims \$5000 for rent collected by the landlord after she evicted her illegally, for the return of double her security deposit and for compensation to replace her belongings which the landlord put out on the street.

She said she was served a Notice to End Tenancy dated December 1, 2012 and the landlord then illegally evicted her by changing the locks on January 7, 2013. She provided no receipts for rent or a security deposit paid to this landlord prior to January 2013. Records from the Ministry show \$800 paid to this landlord in January and February 2013. Ministry records prior to January and after February show rent of \$800 and a security deposit of \$400 being paid to a realty company. The tenant said she was living elsewhere while she painted and prepared the unit for occupancy.

In evidence are Ministry records of payments, a note from the ministry, the Notice to End Tenancy and a representation agreement for an advocate.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

The onus is on the applicant to prove on a balance of probabilities that she was illegally evicted, that she is entitled to an Order of Possession for the unit and to compensation. I find the tenant's evidence credible that she was illegally evicted in early January while the landlord continued to collect rent through the Ministry. Her evidence is well supported by Ministry records showing rent of \$800 provided to the landlord in January and February 2013 and a note from the Ministry stating that the landlord had told them that January rent was not paid and the locks were changed on January 7, 2013. According to the note, the landlord told the Ministry that the landlord had tried to contact the tenant without success and that the tenant was no longer living in the premises.

While the tenant may not have been living in the unit while she cleaned and painted it, I find the weight of the evidence is that she did not give up her tenancy as rent continued to be paid and she had not directed the Ministry to pay her rent elsewhere. I find the landlord had the option of applying for an Order of Possession based on her Notice to End Tenancy dated December 1, 2012 but instead the weight of the evidence is that she chose to take the law into her own hands and change the locks in early January which action is prohibited by section 31 of the Act. The Notice to End Tenancy dated December 1, 2012 is set aside and the tenancy reinstated. I find the tenant entitled to an Order of Possession effective two days from service.

As the application was not served in accordance with section 89(1) either personally or by registered mail, I find insufficient service to obtain a monetary order.

Conclusion:

I find the tenant entitled to an Order of Possession pursuant to section 54 of the Act. I set aside the Notice to End Tenancy dated December 1, 2012. **The tenancy is reinstated.**

I dismiss the application of the tenant for a monetary order due to insufficient service and I give her 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: May 21, 2013

Residential Tenancy Branch

