



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD OLC FF

Introduction:

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

- a) A monetary order pursuant to Section 67 for damages to the property;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

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

- d) For a return of twice the security deposit pursuant to section 38;
- e) For a refund of rent for July 2013 due to illegal eviction; and
- f) To return the tenant's property to him and/or compensate the tenant for damage to his property and for towing charges and storage.

SERVICE

Both parties attended the hearing and the landlord confirmed receipt of the tenant's Application for Dispute Resolution. I find the tenant's documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

However, the landlord said he had no forwarding address for the tenant so he left the application outside the former suite door of the tenant. The tenant is not allowed on the property so he never received the copy of the landlord's application. The tenant gave his forwarding address for service to the landlord on the telephone at the hearing and the landlord said he had copied it. I advised the landlord that he could either serve the tenant at the new address by registered mail or in person with a witness when he comes to retrieve his property as ordered in this hearing. I dismiss the landlord's application with leave to reapply.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that he is entitled to the refund of his security deposit, his rent for July 2013 and the value of his goods that he alleges were destroyed or discarded by the landlord?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The landlord's application was dismissed with leave to reapply at the outset of the hearing as he had been unable to legally serve the tenant with it.

The tenant is claiming \$23,560. He requests the return of his security deposit of \$250, refund of July rent in the amount of \$500 and over \$22,000 for property allegedly discarded or thrown out by the landlord. The tenancy commenced in April 2013, a security deposit of \$250 was paid and the tenant still had not provided a forwarding address in writing to the landlord at the time of the hearing. He gave the address of a shelter where he is staying and the landlord copied it for the purpose of serving of the landlord's application. The landlord was granted an Order of Possession at a hearing on June 18, 2013 and the landlord testified he served it on the tenant on June 20, 2013 to be effective two days from service. The landlord said the tenant left on Sunday but left some belongings behind and they were removed, he thinks by the tenant. When questioned, he said there was no bailiff involved and he did not know for sure who had removed the items but the tenant showed up later and kicked his door so he called the police.

The landlord said the items were all over the street but some items were still in the basement suite but they do not appear to be useful items so he thinks the tenant just was leaving them behind. He said the City served two orders to remove the items including a boat and trailer and he thinks the boat and trailer were removed by them to the impound and he took some items to the dump in response to the City order.

The tenant's version of events is quite different. He said he had received the Order of Possession and had gone out to try to arrange a truck to remove his stuff and a friend to help him. He said that when he returned that evening, his goods were all put outside in the rain and even his trailer had been pushed out into the street. He provided a photograph of his scooter chained to a post and said it is the landlord's lock on it and he also changed the locks to the suite. He also provided photographs of his personal belongings in a driveway or the street, including dresser drawers, a couch and a boxspring. He said when he had left that morning, the landlord and some friends were standing there and he believes they threw out his belongings entering through the bedroom window and breaking the plywood on the outside storage (pictured). He said it is ridiculous to believe that he threw out all his housekeeping items which are valuable

in the pouring rain. He does not have invoices to prove value as he said they are all in the suite.

The landlord claims he did not enter the suite or change the locks until later. He said he is not responsible for the tenant's stuff; he had time to remove it and he can't take care of it. He said the boat was on his property for 3 days after the tenant left but then he pushed it into the street and the City removed it. He said there are still some items in the suite, though not of value. He said when the City gave him the first order, he put some of the tenant's items on his driveway and property but then the City gave him an order to remove the goods from his property. He said there are still some of the tenant's items in the suite and under the sundeck.

The tenant's evidence contains photographs, a handwritten statement and a long handwritten list of missing goods and values. There are no invoices and it is unknown what is remaining under the sundeck or in the suite.

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

Analysis

On the tenant's application, the onus is on him to prove on the balance of probabilities firstly, that the security deposit should be refunded in accordance with section 38 of the Act and he is owed a refund of rent for July 2013. I find the tenant has still not vacated the suite although the landlord changed the locks as some of his belongings remain on the property and the court was not involved in a formal eviction procedure. In accordance with section 38 of the Act, I find the tenant is not entitled to the refund of the security deposit until the later of him vacating and providing his forwarding address in writing. I find his application for the refund of the security deposit is premature and I give him leave to reapply when the conditions of vacancy and providing his forwarding address in writing have been satisfied. I find he is not entitled to a refund of rent for July 2013 until he has vacated the suite and I give him leave to reapply for this refund as well.

In any claim for damages, the applicant has the onus of proving on a balance of probabilities that there was damage suffered, that it was caused by the respondent and the cost to cure the damage. I find the tenant has not met the onus. While it appears credible that the landlord may have applied self help and removed the tenant's goods after he served the Order of Possession, there are still items in the suite and under the deck so it is unknown what was removed. Furthermore, I find a handwritten list of approximate estimates of what may have been removed by the landlord is insufficient

proof that those items were removed and of their actual value. I dismiss the tenant's claim with leave to reapply.

Conclusion:

I dismiss the landlord's application due to insufficient service and give him leave to reapply within the legislated time limits.

I dismiss the tenant's application for a monetary order due to not meeting the criteria of section 38 for the refund of the security deposit and for its general uncertainty as to what is missing and the values and give him leave to reapply within the legislated time limits.

No filing fees are awarded.

I HEREBY ORDER THAT the tenant arrange for police escort to enter the landlord's property and remove all his goods in one day between the hours of 8a.m. to 4 p.m. by August 22, 2013 and that the tenant telephone or mail the landlord notice of the date of required entry at least two days in advance.

I HEREBY ORDER THAT the landlord allow the tenant entry to the suite and all the landlord's exterior property and make arrangements for someone to be present on the arranged date of entry between the hours of 8a.m. and 4 p.m.

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: August 08, 2013

Residential Tenancy Branch