



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with an application by the tenant for a monetary order, including return of double the security deposit. Although served with the Application for Dispute Resolution and Notice of Hearing by Registered Mail sent to the address at which the landlord lives and from she conducts her business, the landlord did not appear.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced April 1, 2012. The monthly rent of \$1250.00 was due on the first day of the month. The tenant paid a security deposit of \$625.00.

The rental unit was the main floor of a house and was located across the street from the landlord's home. During her tenancy the tenant lived there with two dogs and two cats. From time to time, she also had a roommate. Her two year old son, who was in foster care, also stayed with her from time to time.

On September 13, 2012, the parties participated in a dispute resolution hearing on file 796697. At that hearing an agreement was reached and was reduced to a decision and order. The parties agreed that the tenancy would end at 1:00 pm on October 31, 2012, and an order of possession would be granted effective that date.

The tenant testified that she had paid the rent for September.

On September 14, 2012, the tenant was arrested. She remained in custody until April 13, 2013.

After she was arrested the tenant made arrangements with her mother and her friends to have her pets taken care of and the contents of her rental unit moved into storage.

Her friend filed a statement describing how she went to the rental unit on September 16 to feed the tenant's pets. When she arrived at the rental unit the landlord was allowing

different people to enter the unit and take away the tenant's belongings such as the television, X-Box, and furniture. There was also a truck loaded with the tenant's belongings. The landlord would not allow the friend to get close to the house. When the friend called the police the landlord became very aggressive with her. When the police arrived they told her she had to have a letter from the tenant giving her permission to enter the rental unit.

Because the tenant was incarcerated it took a little while to arrange the letter. When the tenant's friend returned two days later with the letter she found that the locks on the rental unit had been changed. The friend showed her letter to the landlord who continued to refuse her access to the unit.

The friend stated that over the next several days she made many attempts to contact the landlord by telephone and text but received no response.

On September 28 she received a call from another friend of the tenant saying the tenant's belongings were being thrown into the back yard and the alley and there was a U-Haul at the rental unit. The friend immediately went to the rental unit where she saw that everything was being loaded up for the dump. She sent a text message to the landlord who did reply, but very rudely.

The tenant testified that another friend told her she was contacted by the landlord sometime towards the end of September about the tenant's belongings. When that friend arrived at the rental unit all that was left was some broken furniture.

Based on advice received from the Residential Tenancy Branch the tenant wrote the landlord a letter reminding the landlord of her obligations under the Residential Tenancy Act and the Regulation; advising the landlord of the name of the tenant's agent; providing a list of her belongings; and asking for the return of her possessions. The tenant had her friend deliver this letter personally to the landlord. The friend's written statement is that the landlord told her not to get involved and to mind her own business. Neither the tenant or her friend heard anything else from the landlord.

The tenant tried to find out what happened to her pets. The SPCA told her they picked up a female cat, which was subsequently adopted, and a dog, which was put down. The tenant was never able to find out what happened to her other dog and cat. Based on reports from friends who lived in the area and who reported seeing some of the pets roaming loose, she thinks the landlord let all the pets out in mid-September.

The tenant provided a long list of items that were in the rental unit when she was arrested. The list includes a large television, bed and couch that were bought at the start of this tenancy; assorted electronic and computer components; clothes, jewellery, perfume, and prescription glasses; baby supplies; bikes; and other household items. The tenant assigned values to these items which she testified were based upon their value as “used” goods.

The tenant also listed many items of sentimental value. These included a locket containing some ashes from her deceased baby; footprint, umbilical cord and ultrasound pictures of her son; photo albums; a camera containing pictures and videos; and her wedding dress.

The tenant testified that her 1998 Honda Civic, that had been parked in the parking spot provided with the rental unit, was also missing. The ICBC value of the car is \$2200.00. She reported the vehicle as a stolen vehicle but has never heard anything more.

The tenant’s mother also testified. She said that when the landlord was conducting reference checks prior to the start of this tenancy, the landlord telephoned her. Although her contact information has not changed since then, the landlord never called her after her daughter was arrested.

The tenant’s mother testified that many of the items of jewellery claimed by the tenant were gifts from her to her daughter. She also corroborated the tenant’s testimony about the general quantity and age of the items in the rental unit.

The tenant testified that she gave her forwarding address in writing to the landlord when she served the landlord with the application for dispute resolution.

Analysis

The evidence before me is that the rent had been paid to the end of September and the landlord did not have an order of possession that allowed her to take possession of the rental unit before September 30. Further, the circumstances here do not meet the definition of “abandoned” as contained in the *Residential Tenancy Regulation*.

Even if the landlord had had a legal right to take possession of the rental unit the Regulation sets out the procedure that must be followed by landlord if a tenant abandons property worth more than \$500.00 in the rental unit. The landlord did not follow any of those procedures.

Not only did the landlord not follow the legal procedures she thwarted any efforts by the tenant to deal with her pets and personal property.

As a result of her breach of the *Residential Tenancy Act* and the *Residential Tenancy Regulation* the landlord is responsible for the losses suffered by the tenant as a result of the landlord's action.

The application law on damages is summarized in *Residential Tenancy Policy Guideline 16: Claims in Damages*, which states that an arbitrator can award a sum for out-of-pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss. On a claim by a tenant for damages for breach of the abandonment regulations by the landlord the normal measure of damages of the market value of the lost articles, i.e. the price of a similar item in the market. The price of a similar item in the market must include reference to its condition at the time of its loss. For items, such as photographs, which may have limited market value but great sentimental value to the tenant, an arbitrator may consider the size and scope of the collection and the intrinsic value to the tenant.

The only claim I am not including in my calculation of damages is the claim for the missing Honda Civic. Cars parked in open spaces are routinely stolen. There is no evidence that directly links the landlord to the disappearance of the car as there is linking the landlord to disappearance of the tenant's belongings from inside the rental unit.

Like all claims of this nature the tenant's inventory of belongings and the value assigned to them are approximations and no specific value can be assigned to loss of items of significant sentimental value and of pets.

Having considered the egregious conduct of the landlord and the nature of the items lost by the tenant, I award the tenant \$20,000.00 as general damages.

With respect to the claim for payment of double the security deposit the tenant's application for dispute resolution did contain the tenant's forwarding address in writing.

Section 38(1) of the *Residential Tenancy Act* provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. In the present case, the landlord has done neither.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not allow any flexibility on this issue. According I find that the landlord must pay the tenant the sum of \$1250.00 which represents double the security deposit paid by the tenant.

Conclusion

I find that the tenant has established a total monetary claim of \$21, 250.00 as detailed above, and I grant the tenant an order pursuant to section 67 in that amount. If necessary, this order may be filed 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: October 08, 2013

Residential Tenancy Branch

