



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR RR MNDC MNSD 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 Sections 46 and 67 for unpaid rent and 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) A monetary order or rent rebate as compensation for the landlord changing locks before the end of the tenancy resulting in a loss of her belongings;
- e) A monetary order for the return of her security deposit pursuant to section 38; and
- f) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated December 2, 2013 and of each other's Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent is owed and they are entitled to a monetary order for rental arrears and other damages and to recover the filing fee for this application?

Has the tenant proved on the balance of probabilities that the landlord changed her lock and caused her loss for which she is entitled to compensation? Is she entitled to recover filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in July 2012, that rent is \$725 a month plus \$10 parking and a security deposit of \$362.50 was paid on June 4, 2012. It is undisputed that the tenant did not pay rent for December 2013 and the landlord served a Notice to End Tenancy dated December 2, 2013. The landlord said that they arranged a suite inspection for December 3, 2013 and when they entered, they found the tenant had posted a note to say she was in the process of moving her stuff. The tenant agreed that she did not give a date when she would be vacated; she said she was still living there and she wrote on the note she would come see the landlord about the December rent and requested that they telephone her.

The landlord said the tenant had movers there on December 2, 2013, they believed she had moved and changed the lock on December 7, 2013. The tenant said she came home from work and found the lock changed and had to sit in her car for 5 hours to get the new key to re-enter her suite. The landlord said she called at 4:30a.m. and she was asked if she could meet staff at 9:00 a.m. to arrange the key; he said that when they said they thought she had moved, she said she was there to get her last minute things. She went into the unit and called to state that some of her belongings were missing.

The tenant called the RCMP to report jewellery, purses and clothing was missing but the police declined to finger print and pointed out that the balcony door and windows were open. Several staff members were present and noted some inconsistencies such as a laptop on the floor and that a couch and chair seemed to have been moved back into the unit. The tenant said she was not accusing the landlord of stealing her stuff.

On December 11, 2013, the parties agreed that the landlord telephoned to ask permission to enter the suite to show it to a prospective tenant on December 14, 2013. The tenant said she agreed if it was after 3:30p.m. when she got home but the landlord called on December 13 and said she needed to show it at 11:30a.m. The landlord claims they were denied permission to show the suite to this prospect and thereby lost rent for January 2014. The landlord claims as follows:

\$725 rent for December + \$20 late fee + \$10 parking

\$725 rental loss for January 2014 due to insufficient notice to end tenancy

\$157.50 junk removal; invoice provided. The tenant said she left a couch for she was out of time to move.

\$68.25 Carpet cleaning; invoice provided. The tenant said she had no chance to clean.

\$96: suite cleaning

\$20: drape cleaning

The landlord said they were no longer claiming \$75 for lock replacement. It was noted on the move-out report that the tenant offered to return keys at 10:10 p.m. on December 31, 2013 but the tenant was requested to do this the next day. In respect to the misunderstanding about the tenant vacating, the landlord said that a gentleman came on December 3, 2013 and moved the couch out and then it seemed to have been moved back in. The tenant said that she had planned to give the couch to someone in the building.

In her cross application, the tenant claims \$4200 based on the fact that the manager changed locks on December 8, 2013 and showed her suite without permission on December 12, 2013. She said all the lights were on when she came home so she knows the landlord showed the suite. Because the locks were changed, she does not know who was in her suite and she suffered loss of jewellery, purses and clothing

In evidence is the Notice to End Tenancy for unpaid rent, statements of three staff members of the landlord describing events in December, invoices for charges, the tenancy agreement, and a move-in and move-out condition inspection report, three written opportunities to attend for the move-out inspection with the final one being on December 31, 2013. .

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

Analysis:

The landlord no longer requires an Order of Possession as the tenant has vacated.

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord's evidence credible that the tenant did not vacate the suite until December 31, 2013 when she offered to return the keys to the landlord. It is undisputed that she paid no rent for December. I find that her note inside her suite early in December did not give a date when she planned to vacate but merely said she was moving her stuff out. According to section 44 and 45 of the Act, the tenant must give a full month's Notice to End her tenancy. I find the weight of the evidence is that she did not so I find the landlord entitled to recover rental arrears of \$725 plus \$20 late fee \$10 parking fee for December 2013 plus rental loss of \$725 for January 2014. I find the landlord took steps to mitigate his loss as he provided evidence of extensive advertising. Although the tenant said she had an agreement with a female staff member that she could move by

December 15, 2013 and she would only owe the amount of her security deposit, I find this is inconsistent with her behaviour for she did not vacate or return keys by December 15, 2013.

I find the weight of the evidence is that the tenant left some items, at least a couch, in the unit and did not clean the carpets or suite as she had no time. Therefore I find the landlord entitled to recover \$157.50 for removal of items left behind, \$68.25 for carpet cleaning, \$96 for suite cleaning and \$20 for drape cleaning. I find the landlord's evidence well supported by invoices, the condition inspection reports and the tenant's statements in the hearing.

On the tenant's claim, the onus is on her to prove it on a balance of probabilities. I find it is undisputed that the landlord did change the locks prematurely and this caused her to suffer the discomfort of sitting outside for about 5 hours while she awaited the new key. I find her entitled to a rebate of rent for December 2013 of \$100 to compensate her for this discomfort.

In respect to the balance of her claim, the onus is on her to prove on a balance of probabilities that the landlord through act or neglect caused her losses of approximately \$4000. I find insufficient evidence to prove that the loss of her goods was caused by the landlord. I note that the Police noticed windows and a balcony door open so I find it equally probable that an outside person caused the theft by entering and not the staff of the landlord by changing the locks. I find the landlord is not the insurer of the tenant's property and I find insufficient evidence that the landlord caused her losses. Therefore, I dismiss this portion of her application without leave to reapply.

Conclusion:

I find the landlord entitled to a monetary order as calculated below, to retain the security deposit to offset the amount owing and to recover the filing fees for this application.

I find the tenant entitled to \$100 rent rebate for December 2013. I dismiss the remainder of the application of the tenant in its entirety without leave to reapply. As she was largely unsuccessful, I find she is entitled to recover half of her filing fees for this application.

Calculation of Monetary Award:

Rent arrears December plus late fee & parking (725+20+10)	755.00
Rental loss January due to insufficient notice	725.00
Junk removal	157.50

Carpet cleaning	68.25
Suite and Drape cleaning (96+20)	116.00
Filing fee	50.00
Less security deposit (no interest 2012-13)	-362.50
Less rent rebate for December due to lockout	-100.00
Less \$25 filing fee to tenant	-25.00
Total Monetary Order to Landlord	1384.25

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: March 05, 2014

Residential Tenancy Branch

