



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67;
2. An Order that the Landlord comply – Section 62.

The Landlords and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath. The Landlord’s Witness provided evidence under oath. At the onset of the Hearing the Tenant confirmed that they were no longer seeking an order for the Landlord’s compliance.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started in 2009. Rent of \$375.00 was payable monthly and at the outset of the tenancy the Landlord collected \$180.00 as a security deposit. The Landlord states that they have not returned the security deposit as they do not have the Tenant’s forwarding address. The Tenant confirmed that the address contained in the Tenant’s application is his forwarding address.

The Tenant states that on January 21, 2014 the Landlord refused the Tenant access to his unit and as a result the Tenant became homeless. The Tenant states that although

he was given some opportunity to obtain his belongings over the next few days he only took a blanket and a dish. The Tenant submits that he had nowhere to keep his belongings and that the Landlord agreed to place them in storage. The Tenant states that he was unable to find housing for 41 days and that when he did attempt to seek out a shelter they were full. The Tenant states that as a result of the Landlord's actions, he lost personal belongings, provided a list of these belongings with attached value or paid amounts for the items and claims \$2,730 for this loss. The Tenant states that as a result of being refused access to his unit he suffered cold weather and other hardships, including malnutrition and no bathroom facilities, associated with living outside. The Tenant claims aggravated damages of \$2,030.00. The Tenant states that although he was on disability, he did not receive his disability cheque for February 2014 as it was sent to the unit address.

The Landlord states that the Tenant had been given a one month notice to end tenancy for cause in December 2013 with an effective date of January 31, 2014. The Landlord states that as the Tenant did not dispute this notice he would have had to leave the unit as of January 31, 2014. The Landlord states that on January 21, 2014 due to the behavior of the Tenant, the Tenant was given a choice of either being reported to the police or leaving the unit immediately. The Landlord refers to the letter given to the Tenant on that day and it is noted that this letter was provided as evidence by the Tenant. The Landlord confirms that no order of possession was obtained for the unit.

The Landlord states that the Tenant was allowed access to his unit during the next few days to remove his belongings but was not allowed to remain overnight in the unit. The Landlord states that all belongings that the Tenant did not remove were thrown out. The Landlord's Witness states that the Tenant did remove some belongings but is not sure what. The Witness states that on the third day after being refused overnight access the Tenant told the Witness that he took all the belongings he wanted and returned the keys. The Witness states that the Tenant did not tell him to throw the remaining items in the garbage. The Witness states that no list of belongings were

made prior to their disposal and that they were made up of clothes and scrap metal and other items described as garbage.

The Tenant argues that no consent was ever provided to throw out his belongings and that even if the Landlord were to consider them as abandoned the Landlord was still required to store the items for a period of time.

The Tenant states that the Landlord knew of the Tenant's circumstances when they refused access to the unit and should have known that this act would result in the Tenant's homelessness. The Landlord states that when they did refuse access they also offered the Tenant help with seeking social and shelter services.

It is noted that during the Hearing the Landlord stated that since the Tenant had been given a choice of being reported to the police or leaving and has since made this dispute that the Landlord will now seek to involve the police over the matter that led to the Tenant's loss of access to the unit.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Aggravated damages are awarded where compensation is necessary to take into account distress and humiliation or other serious injury and not to penalize the offending party.

It is very clear that the Landlord did not comply with the Act when they refused the Tenant access to the unit prior to the effective date of the Landlord's notice to end

tenancy. As a result, the Tenant became homeless and suffered a significant and serious loss both emotionally, physically and financially. I find that the Tenant is entitled to compensation for the Landlord's actions that cause these losses.

Although the Landlord states that the Tenant was given liberty to remove all his belongings, it should have been readily apparent that the Tenant would have no place to remove them to and the Landlord would be obliged to store these belongings. As the Landlord failed to make an accounting of the items thrown in the garbage, I find that the Tenant has substantiated on a balance of probabilities that the items identified in the evidence package were lost. However, the Tenant's evidence of value of those items is unsupported and considering the Landlord's evidence of valueless items being left, I find that the Tenant has not substantiated the amount claimed. I find that the Tenant is only entitled to a global sum of **\$500.00** for the loss of his belongings.

I accept the Tenant's evidence that as a result of the actions of the Landlord the Tenant became homeless during a cold winter month. I also accept that the Tenant faced significant challenges in obtaining emergency shelter and that given his homelessness faced nutritional deficiencies and bodily injury from the cold, not to mention humiliation from a lack of access to bathroom facilities, among other things. Although the Tenant would have had to move out of the unit approximately a week later, I accept that the sudden homeless situation created additional barriers in relation to obtaining other housing. Although the Landlord appears to argue that the Tenant was homeless out of choice, I given this position little credence. Further the suggestion of retaliation by the Landlord for the Tenant pursuing its rights implies vindictive behavior on the part of the Landlord that was likely present during the eviction of the Tenant which would reasonably cause the Tenant additional stress. I therefore find that the Tenant has substantiated compensation for aggravated damages in the amount of **\$2,030.00** as claimed.

Finally, I find that the Landlord, as of the date of the hearing, has the Tenant's forwarding address in writing and that the Landlord must now deal with the Tenant's

security deposit as provided under Section 38 of the Act. This section 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 repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for **\$2,530.00**. 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: May 7, 2014

Residential Tenancy Branch

