



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RRP, OPT, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order of possession; an order returning her personal possessions and a monetary order.

The hearing was conducted via teleconference; was first convened on June 27, 2014 and was attended by the applicant, her agent, and the respondent. The hearing was reconvened on October 8, 2014 by teleconference and was attended by the applicant and her agent.

During the hearing of June 27, 2014 the respondent raised the issue of jurisdiction (see Interim Decision dated June 30, 2014). In that hearing the applicant testified that the respondent had told her that he did not have to pay rent because he took care of the rental unit on behalf of the landlord. As a result of this issue being raised I made a number of orders related to the matter of jurisdiction.

In the Interim Decision I ordered the respondent to provide a letter from his landlord regarding his role as either a tenant and/or an agent for that landlord. I ordered that this letter be sent to me and to the applicant's agent. I further ordered the applicant's agent to provide a written response to the applicant and to me.

Specifically I ordered the following:

- The respondent was to obtain a letter from his landlord confirming their relationship. The letter was required to outline whether or not the respondent acts as the landlord's agent or representative in relation to other potential tenancies in the rental unit; the letter was also required to indicate whether or not the respondent had the authority to enter into tenancy agreements on behalf of the landlord; collect security deposits and rent on behalf of the landlord; make all repairs to the residential property on behalf of the landlord; change locks in response to failed tenancies on behalf of the landlord; and represent the landlord in dispute resolution proceedings conducted through the Residential Tenancy Branch;
- The respondent's landlord's letter was to be provided no later than the end of business Wednesday, July 16, 2014 to me by fax and to the applicant's agent by

email. My fax number and the applicant's agent email address were provided to the respondent during the hearing; and

- The applicant's agent would have until the end of business Monday July 28, 2014 to provide a written response to the respondent's landlord's letter to me by fax and the respondent by email. My fax number and the respondent's email address were provided to the applicant's agent during the hearing.

On July 10, 2014 the respondent provided to me a document that appears to be an email, however it lists only the respondent's email address and provides no indication from whom or from where it was sent.

On July 28, 2014 I received, from the applicant's agent a written response to my order noted above in which he indicates that the respondent did not provide a copy of any letter from his landlord to the applicant's agent, as I had ordered. During the reconvened hearing the applicant's agent confirmed that he had not received any thing from the respondent.

As the respondent failed to provide the applicant or her agent with a copy of the document he submitted to me I have not considered the noted document. By failing to provide a copy to the applicant or her agent I find the applicant has been deprived of the opportunity to address anything in the document.

Section 1 of the Residential Tenancy Act (Act) defines a landlord, in relation to a rental unit, as:

- a) The owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - i. Permits occupation of the rental unit under a tenancy agreement, or
 - ii. Exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- b) The heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- c) A person, other than a tenant occupying the rental unit, who
 - i. Is entitled to possession of the rental unit, and
 - ii. Exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

A former landlord, when the context requires this.

Based on the respondent's failure to provide any evidence to the contrary I find that the respondent was acting on behalf of the landlord when he entered into a tenancy agreement with the applicant despite the respondent calling the agreement a "Roommate Occupancy Agreement". As such, I accept jurisdiction in these matters. I note that as a result, I find the applicant was a tenant and the respondent was a landlord under this tenancy agreement.

Issue(s) to be Decided

The issues to be decided are whether the applicant is entitled to an order of possession; to a monetary order for compensation for a wrongful eviction; to an order requiring the respondent to return personal possessions and to recover the filing fee from the respondent for the cost of the Application for Dispute Resolution, pursuant to Sections 54, 65, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted into evidence a copy of a tenancy agreement (called "Roommate Occupancy Agreement") for a month to month tenancy beginning on February 25, 2014 for a monthly rent of \$500.00 due on the 25th of each month with a security deposit of \$250.00 paid. The tenancy ended when the landlord changed the locks on the tenant on or before March 26, 2014.

The tenant submits that she moved her belongings into the rental unit on March 9, 2014. She states that immediately after moving into the unit the landlord informed her that she had no right to any privacy and that he and he alone set all of the rules and that the tenant must abide by his rules if she wanted to live there.

The tenant submits that soon after this the landlord started inviting her to travel and suggested "trading services" and continually reminded her of the rules and the agreement. The tenant submits that as a result of these actions she began to feel uncomfortable and on March 15, 2014 she went to stay with a friend.

The tenant submits that she wrote a letter of complaint to the landlord and on March 21, 2014, when she returned to her rental unit, she noticed that her clothing had been gone through and a letter from the landlord was left on her bed. She states that she was so shocked and horrified at the content of the letter that she immediately arranged to have her belongings moved out.

The tenant submits that on March 26, 2014 she returned to get the remainder of her belongings and the lock on her unit had been changed and she was unable to retrieve a number of her belongings. The tenant submits that she provided the landlord with her forwarding address by March 26, 2014 in order to return her postdated cheques and security deposit. The tenant also submits she provided her forwarding address again when she served the landlord with her original hearing notice and evidence package on June 12, 2014.

The tenant seeks an order to have the following items returned to her:

- 5 Chicago Culinary Kitchen Knives;
- 2 Henckel kitchen utensils (spatulas);
- Oven Mitt-Silicone, red (Kussi);

- 1 Kitchen hand mixer/electric beater;
- 1 stone mortar and pestle set (Large);
- Tide Laundry Pods (72 count); and
- Dryer Sheets, Tide (70 count).

The tenant also seeks return of her rent paid for the month of March 2014; return of her security deposit; and compensation for the costs she incurred as a result of having to move out of the rental unit on an emergency basis in the amount of \$945.00 (receipt submitted into evidence).

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

Based on the tenant's undisputed testimony I find the landlord failed to meet his obligations under Section 28 of the *Act* to provide the tenant with reasonable privacy; freedom from unreasonable disturbance; or exclusive possession of the rental unit. As such, I find the tenant is entitled to compensation.

Based on the circumstances and the timelines involved in the case before me I find that the tenant is entitled in an amount equivalent to the amount of rent paid for the period or \$500.00.

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Also based on the tenant's undisputed testimony and evidence, I find the tenant wrote the landlord a letter advising him of his breach of a material term of the tenancy agreement and he failed to correct the situation within a reasonable time. In fact, I find the landlord further breached the tenant's right to privacy when he provided his response by placing it on the bed in her rental unit.

As such, I find the tenant had no choice but to end the tenancy in the urgent manner that she did and I find the landlord, by his actions, was the cause of that urgent need. Therefore, I find the tenant is entitled to compensation for the costs of moving the tenant out of the rental unit. I am satisfied the tenant has provided sufficient evidence to establish the value of the cost of moving at \$945.00.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I also find that the tenant provided her forwarding address to the landlord on or before March 26, 2014 and as a result the landlord had until April 11, 2014 to return the security deposit in full or file an Application for Dispute Resolution to claim against the deposit. As the landlord has not filed an Application to claim against the deposit at all I find the landlord failed to comply with Section 38(1) of the *Act* and as such the tenant is entitled to double the amount of the security deposit pursuant to Section 38(6).

Further and also based on the tenant's undisputed testimony I am satisfied the landlord has prevent the tenant from retrieving her personal belongings as listed above.

Therefore I order the landlord must return, within 30 days of receipt of this decision, the following items to the tenant:

- **5 Chicago Culinary Kitchen Knives;**
- **2 Henckel kitchen utensils (spatulas);**
- **Oven Mitt-Silicone, red (Kussi);**
- **1 Kitchen hand mixer/electric beater;**
- **1 stone mortar and pestle set (Large);**
- **Tide Laundry Pods (72 count); and**
- **Dryer Sheets, Tide (70 count).**

Should the landlord fail to comply with this order the tenant is at liberty to file an additional Application for Dispute Resolution seeking compensation for the replacement of the above noted items.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,995.00** comprised of \$500.00 rent owed; \$500.00 double the security deposit; \$945.00 moving costs and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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 10, 2014

Residential Tenancy Branch

