



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP

Introduction

This is an application filed by the tenant for a monetary order for money owed or compensation for damage or loss and an order for the landlord to return the tenant's personal property.

Both parties attended the hearing by conference call and gave testimony. The landlord did not submit any documentary evidence, but confirmed receipt of the tenant's submitted documentary evidence. As such, I find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence.

Both parties confirmed receipt of the tenant's documentary evidence detailing the tenant's monetary claim, but that the tenant failed to file a copy for the application. During the hearing, the tenant amended the monetary claim and lowered it to \$1,050.00 from the \$1,500.00 applied for. The landlord made no comments on this change.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Is the tenant entitled to an order for the return of personal property?

Background and Evidence

Both parties agreed that this tenancy began on August 1, 2014 on a month to month basis. The monthly rent was \$500.00 payable on the 1st of each month and a security deposit of \$250.00 was paid on August 1, 2014. Both parties agreed that the tenancy ended and that the landlord returned the \$250.00 security deposit to the tenant.

The tenant seeks compensation of a monetary claim of \$1,050.00 for the landlord illegally entering the rental unit and going through the tenant's belongings and taking

whatever they want. This consists of \$1,000.00 for the return of \$500.00 in rent paid for August 2014 and \$500.00 as compensation for the landlord illegally entering the rental unit. The tenant also seeks \$50.00 for the cost of a vacuum that was missing.

The tenant states that on September 21, 2014 at approximately 5 or 6 pm, the tenant returned to find her personal belongings removed from the rental unit and placed in the carport. The landlord acknowledged that the landlord removed the tenant's belongings without permission and changed the locks. Both parties confirmed that the tenant called the police who ordered the landlord to change the locks and allowed the tenant into the rental unit. Both parties confirmed that an agreement was made for the tenant to vacate the rental unit in exchange for the return of the \$250.00 security deposit. The landlord states that the tenant gave a letter dated September 3, 2014 to the landlord ending the tenancy on September 14, 2014, but did not vacate the rental unit until September 24, 2014 and over held the unit and did not pay any rent for September 2014.

The tenant also seeks an order for the landlord to return personal property consisting of a vacuum, swifter mop, dustpan, yellow electric cord, bike, cordless phone, mouse and keyboard. The landlord disputes this claim stating that no items were missing as the tenant called the police at the time and did not report any missing items. The tenant states that she filed a report with the police, but did not report any missing items. The tenant states that she has a witness, but did not provide a witness or a witness statement to support her claim. The tenant states that the vacuum for \$50.00 was recently purchased and that she had a receipt for it, but did not submit any proof or its replacement.

Analysis

I accept the evidence provided by both parties and find on a balance of probabilities that the tenant has failed. The onus or burden of proof lies with the party who is making the claim. In this case it lies with the tenant. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The tenant's monetary claim is dismissed because of insufficient evidence as the tenant has not provided any evidence of missing items nor their value. However, the tenant has established that the landlord without permission entered the rental unit and removed her belongings as confirmed by the landlord's direct testimony. I find that this inconvenience took place for approximately 3-4 hours. On this basis, I find that the tenant has established a claim for a nominal award for the inconvenience imposed by the landlord. The tenant is granted a nominal award of \$50.00.

On the tenant's claim for an order for the return of personal property, I find that the tenant has failed. As noted, the tenant failed to provide sufficient evidence that there were missing items, nor has the tenant provided evidence of the value of the tenant's claims. The tenant has not provided any evidence of a loss that occurred as a result of the Landlords actions. This portion of the tenant's claim is dismissed.

The tenant has established a claim for \$50.00. The tenant is granted a monetary order for \$50.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$50.00.

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: November 13, 2014

Residential Tenancy Branch

