



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, RPP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of her security deposit, pursuant to section 38;
- an order requiring the landlord to return the tenant's personal property, pursuant to section 65.

The landlord did not attend the hearing, which lasted approximately 47 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that she served the landlord with her application for dispute resolution hearing package ("Application") on February 27, 2015, by way of registered mail. The tenant provided a Canada Post tracking number orally during the hearing, to confirm this service. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

Issues to be Decided

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to an order requiring the landlord to return the tenant's personal property?

Background and Evidence

The tenant testified that this tenancy began on October 28, 2014 and ended on November 28, 2014. Monthly rent in the amount of \$750.00 was payable on the 28th day of each month. The tenant testified that a written tenancy agreement governs this tenancy, but she did not provide a copy for this hearing.

The tenant testified that she paid a security deposit of \$375.00 and the landlord continues to retain this deposit. The tenant testified that this deposit was paid in two installments: 1) \$100.00 cash on October 17, 2014 and \$275.00 cash on October 28, 2014. The tenant provided a receipt to confirm the \$275.00 payment. The tenant testified that she received a note on an envelope from the landlord to confirm the \$100.00 payment but that she lost this envelope and was unable to provide a copy for this hearing.

The tenant seeks the return of double the amount of her security deposit, totaling \$750.00, stating that the landlord did not return her deposit within 15 days of providing a forwarding address in writing. The tenant testified that there were no unpaid amounts owing at the end of this tenancy and that she did not give written permission to the landlord to retain any amount from her security deposit. The tenant stated that she provided a forwarding address to the landlord in writing on December 20, 2014, by way of a letter that was sent by regular mail. The tenant provided a copy of this letter with her Application. The letter asks for a return of the tenant's \$375.00 security deposit.

The tenant also seeks \$236.61 for clothing that she had to purchase because the landlord locked her personal belongings in the laundry room at the rental unit and refused the tenant access when she vacated. The tenant stated that she advised the landlord not to enter her rental unit without proper notice and the landlord locked her clothing and other personal property in the laundry room, as retaliation. The tenant stated that she stored her and her son's belongings in the laundry room because there was no closet space at the rental unit, with the exception of a broken bedroom closet. The tenant indicated that she has been unsuccessfully asking the landlord for access to retrieve her belongings since November 6, 2014, without any response from the landlord. The tenant stated that the only information she received from the landlord was a letter posted to her rental unit door, asking her to vacate the rental unit in early November. The tenant stated that she vacated the rental unit with very little clothing and that she had to buy clothing for her and her son. The tenant provided a receipt for

\$30.24 for shirts and pants that she had to buy for herself. The tenant also provided a printout of a purchase made on December 17, 2014 in the amount of \$77.37 but no receipt was provided. The tenant also stated that she spent approximately \$129.00 on clothing for her and her son but that she did not keep any receipts because grocery items were also included on these receipts.

The tenant also seeks a return of her and her son's personal property from the laundry room at the rental unit. The tenant indicated that her and her son's clothing, towels, shoes and boots were stored in the laundry room. The tenant stated that if the landlord does not return this personal property, the tenant is seeking a further \$500.00 for replacement of these belongings.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Security Deposit

Section 38 of the *Act* requires the landlord to either return all of the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or if an amount at the end of the tenancy remains unpaid (section 38(3)(b)).

I accept the tenant's undisputed evidence that she paid a security deposit of \$375.00 to the landlord and that it was not returned to her within 15 days of providing a forwarding address in writing. There were no outstanding amounts at the end of this tenancy and the tenant did not give written permission to the landlord to retain any amount from her security deposit. Therefore, I find that the tenant is entitled to return of double the amount of her security deposit in the total amount of \$750.00 from the landlord.

Orders

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the landlord caused her a loss of her personal property and the amount of such loss.

I accept the tenant's undisputed evidence that she had to purchase clothing for her and her son to replace the clothing locked in the laundry room by the landlord. Accordingly, I find that the tenant is only entitled to \$30.24 for clothing expenses, as she only provided one receipt for this amount. The remainder of the tenant's claim for other clothing purchased in the amount of \$206.37 is dismissed without leave to reapply, as the tenant did not provide any receipts for these purchases.

I accept the tenant's undisputed evidence that her and her son's personal property was locked in the rental unit and the landlord refused access despite the tenant's repeated requests. Accordingly, I order the landlord to provide the tenant access to the rental unit, including the laundry room, in order to retrieve the tenant's and her son's personal property, at a mutually agreeable date and time within 30 days of the date of this decision. If the landlord does not provide the tenant access within the above time period or if the tenant's personal property has been disposed of by the landlord, I allow the tenant leave to reapply for a monetary award for the cost of this personal property. Accordingly, the tenant's application for a monetary award in the amount of \$500.00 is dismissed with leave to reapply.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$780.24 against the landlord. The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I order the landlord to provide the tenant access to the rental unit, including the laundry room, in order to retrieve the tenant's property, at a mutually agreeable date and time within 30 days from the date of this decision. If the tenant is not provided access or the

tenant's property has been disposed of by the landlord, I allow the tenant leave to reapply for a monetary award for the cost of this personal property. Accordingly, the tenant's application for a monetary award in the amount of \$500.00 is dismissed with leave to reapply.

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 30, 2015

Residential Tenancy Branch

