



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP, FF

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;
- an order requiring the landlord to return the tenant's personal property, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend the hearing, which lasted approximately 31 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 her mother personally served the landlord with the tenant's application for dispute resolution hearing package ("Application") on March 22, 2015. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was personally served with the tenant's application on March 22, 2015.

At the outset of the hearing, the tenant withdrew her Application for an order requiring the landlord to return her personal property, as she stated that most of her property had been returned by the landlord. Accordingly, this portion of the tenant's Application is withdrawn.

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 recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that this tenancy began on September 9, 2014 and ended on March 16, 2015. The tenant stated that the tenancy was for a fixed term to end on May 31, 2015, but she was required to vacate the rental unit when the landlord changed the locks and refused her access to the unit as of March 16, 2015. Monthly rent in the total amount of \$1,150.00 was payable on the first 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 stated that the tenancy agreement indicated that the tenant was required to pay \$575.00 for rent and her roommate was required to pay an additional \$575.00 towards rent. The tenant indicated that this specific rent division was initialed by both tenants in the tenancy agreement. The tenant testified that each tenant paid a security deposit of \$225.00, totaling \$450.00, and the landlord continues to retain this deposit.

At the hearing, the tenant amended her application to seek a monetary loss of \$1,000.00 rather than the \$2,500.00 sought in her original Application. The tenant stated that she had to purchase clothing, makeup, personal hygiene products and supplies for her dog to replace the personal property locked in the rental unit by the landlord. The tenant stated that the landlord changed the locks and denied her access to the rental unit when she failed to pay full rent for the rental unit. The tenant stated that she also suffered a severe anxiety disorder due to the landlord's actions and that she was seeking compensation for this as well.

The tenant stated that her roommate was evicted by the landlord and the tenant advised the landlord that she could not pay full rent without her roommate's contribution. The tenant stated that an agreement was reached with the landlord whereby she would pay \$750.00 per month for rent but the tenant was only able to pay this for February 2015. The tenant stated that she advised the landlord that she could no longer afford this rent and attempted to pay \$575.00 as per her tenancy agreement. The tenant stated that she paid \$350.00 for March 2015 rent and when the landlord demanded the remaining \$400.00, she was unable to pay and the landlord changed the locks to the rental unit on March 16, 2015. The tenant stated that she was forced to leave the rental unit as she had no access to enter and that she had to stay in a hotel for one night and then at her mother's and friend's houses until she found a permanent place to live. The tenant stated that she now lives at her friend's house and pays rent there. The tenant indicated that she never received a notice to end tenancy from the landlord. The tenant stated that she made reasonable efforts to contact the landlord by telephoning him almost every day, to which he responded that he would not allow her

access to the rental unit or return her personal property until she paid the remaining \$400.00 rent. The tenant stated that she contacted the police and they advised her that this was a tenancy matter and to contact the Residential Tenancy Branch ("RTB"). The tenant testified that she called the RTB for advice and the RTB intervened and spoke to the landlord on her behalf, advising him that changing the locks and denying the tenant access to her personal property was illegal. The tenant indicated that the landlord returned most of her personal property on March 22, 2015, six days after the landlord changed the locks.

The tenant stated that she spent money for a hotel for one night. The tenant indicated that she had to buy approximately \$80.00 in dog supplies including food, a leash, a harness and flea medications. The tenant testified that she spent approximately \$354.95 to purchase clothing. These include dress pants, shirts, dresses and camisoles for work as she works in a professional setting, as well as pajamas, gym and casual attire. The tenant stated that she had to replace all of her makeup and spent approximately \$150.00 for this. She indicated that she spent \$80.00 for hair and dental products, \$150.00 to \$200.00 for groceries and \$50.00 to replace her passport. The tenant stated that she received receipts for the above purchases but that she did not realize she was required to submit these receipts for this hearing. The tenant stated that she was aware that her notice of hearing advised that evidence was important for her position but that she did not realize that this evidence included receipts to support her claim.

The tenant also seeks to recover the \$50.00 filing fee for her Application.

Analysis

While I have turned my mind to 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.

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.

The tenant seeks a monetary order for pain and suffering after experiencing a severe anxiety disorder as a result of the landlord's actions. The tenant also seeks a monetary order for items she had to replace after the landlord locked her personal property in the rental unit. The tenant seeks \$1,000.00 total for these losses.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

I accept the tenant's undisputed evidence that she had to purchase clothing, makeup, personal hygiene products and supplies for her dog, to replace the items locked in the rental unit by the landlord. I find that the landlord breached section 31 of the Act, which prohibits him from changing the locks without providing a new set of keys to the tenant. I find that the tenant made reasonable efforts to contact the landlord to retrieve her items but that she was denied access. Regardless of the landlord's claims with respect to rent, the landlord had options to issue a notice to end tenancy to the tenant for non-payment of rent. The landlord was not permitted to change the locks and deny the tenant access to her personal property. I accept the tenant's evidence that she was required to purchase basic items in order to function in her daily life and attend work. The tenant received her items 6 days after the landlord locked them in the rental unit but had no indication that she would be receiving them until the morning of March 22, 2015, when she received the items. The tenant purchased various items in the six-day period in order to ensure she had basic items for work and home, as she left with only the clothes she was wearing. However, the tenant did not submit any documentary evidence to support her claim, including receipts which she was provided with when she made the above purchases. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenant nominal damages of \$200.00 for the loss of these items.

The tenant did not provide any medical or other documentary evidence to demonstrate that she suffered a severe anxiety disorder as a result of the landlord's actions. Accordingly, the tenant's application for a monetary award for compensation for pain and suffering is dismissed without leave to reapply.

As the tenant was successful in her Application, she is entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$250.00 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.

The tenant's Application for an order requiring the landlord to return her personal property, is withdrawn.

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: April 28, 2015

Residential Tenancy Branch

