



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, RPP, MND, OPC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

The tenant's application is a request for a monetary order for \$3500.00 and a request for an order for return of personal property.

The landlord's application is a request for a monetary order for \$2012.50 and a request to retain the full security deposit towards the claim.

Issue(s) to be Decided

The issues are whether or not the landlord or the tenant has established monetary claim against the other, and if so in what amount, and whether or not to issue an order for the return of personal property to the tenant.

Background and Evidence

The landlords testified that:

- This tenancy was to begin on May 1, 2014, however the tenant moved in on May 3, 2014.
- The tenant was arrested on May 7, 2014 for selling drugs, and never returned to the rental property, nor did the tenant ever contact the landlord again until they receive the tenant's notice of hearing.
- The tenant had been served with a one-month Notice to End Tenancy on May 7, 2014.
- When the tenant vacated the rental unit they found one of the Windows in the rental unit had been broken and therefore it had to be repaired.
- After the tenant was arrested, the tenant's roommates completely removed all of the tenant's belongings from the rental unit and wedged an exit door open with an air conditioner, causing damage to that door. As a result that door had to be repaired. The RCMP informed them that the air conditioner was a stolen item.
- The tenant's roommates also broke the intercom in the rental property tearing it out of the wall. As a result the intercom system had to be repaired.
- Since the tenant did not return, they also lost the rental revenue for the month of June 2014.
- Since the tenant did not return by the end of June 2014, they considered she had abandoned the unit and they re-rented it.

The landlords are therefore requesting a monetary order as follows:

lost rental revenue for June 2015	\$675.00
Broken window	\$130.00
Damaged exit door	\$192.00
Damaged intercom	\$494.00
Filing fee	\$50.00
Total	\$1541.00

The landlords further request an order allowing them to keep the full security deposit of \$337.50 towards this claim and requested a monetary order be issued for the difference.

The tenant testified that:

- She was not arrested for selling drugs; she was arrested on an outstanding warrant that had nothing to do with selling drugs.
- She did not abandon the rental unit; the landlord physically removed her and her belongings from the rental unit, even removing the door so that she could not lock it.
- She did not cause any damage to a window in the rental property or to an exit door.
- Her roommates did not remove any of her personal belongings; they were only removing their own personal belongings from the rental unit.
- Further the intercom was not damaged; a roommate simply took the faceplate off and disconnected the wires so that it would stop ringing.
- When she was arrested, she was sitting outside with all the belongings the landlord had removed from the rental unit, however when she returned after being released a few days later, all of her belongings were missing.
- She is therefore requesting a monetary order against the landlords for \$3500.00 to replace all her missing items, and for the return of her rent for the month of May 2014 a, and return of her security deposit.

In response to the tenant's testimony the landlord testified that:

- At no time did they forcibly remove the tenant from her rental unit, nor did they remove any of the tenant's belongings.
- The tenant was arrested and removed by the police and all of her belongings were removed by her roommates.

- The only thing that was left behind was the air conditioner which the tenants roommates had used to wedge the exit door open, and the RCMP had inform them it was a stolen air conditioner.
- Also the tenant never contacted them again after getting out of jail and, as stated above, they never heard from the tenant again until they receive her application for dispute resolution.
- Further all the damages they have claimed did exist when the tenant vacated, and the intercom had not simply been disconnected, the wires had been damaged inside the wall and the wall had to be cut open in order to repair the damage.

Analysis

It is my finding that the tenant has not met the burden of proving that she was forcibly evicted from her rental unit, or that any of her belongings were removed by the landlord.

The burden of proving a claim lies with the person making the claim, and when it is just that person's word against the other that is insufficient to meet the burden of proof.

In this case it is just the tenant's word against that of the landlord, and therefore she has not met the burden of proving that she was forcibly evicted or that the landlord removed any of her belongings.

I therefore will not allow the tenants claim for the cost of missing personal belongings and based on the evidence presented I find it is most likely that her roommates did remove her personal belongings.

Further, although the tenant claims that she returned to the rental property a few days after her arrest, she again has provided no evidence in support of that claim, and the

landlord's deny ever hearing from the tenant again until they receive her application for dispute resolution.

Therefore the tenant does not have the right to the return of the rent she paid for the month of May 2014, and since the landlord lost the full rental revenue for the month of June 2015, the tenant is liable for the lost rental revenue for that month as well.

As far as the landlords claim for damages to a window in an exit door, it's my finding that the landlord has not met the burden of proving this portion of their claim because in this case it is basically just their word against that of the tenants as to whether this damage existed.

I will however allow the claim for the damage to the intercom, as the tenant testified that her roommate had disconnected the intercom, and therefore I find it likely that the damage was caused by the tenants roommate.

Therefore I deny the tenants full claim and I have allowed the following portion of the landlords claim:

June 2014 lost rental revenue	\$675.00
Intercom repair	\$494.00
Filing fee	\$50.00
Total	\$1219.00

Conclusion

Tenant's application

The tenant's application is dismissed in full without leave to reapply.

Landlord's application

I have allowed \$1219.00 of the landlord's claim, and I therefore order that the landlord may retain the full security deposit of \$337.50, and I have issued a monetary order in the amount of \$881.50.

The remainder of the landlords claim is dismissed without 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: April 27, 2015

Residential Tenancy Branch

