



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD (Tenant's Application)
 MNR, MNSD, FF (Landlord's Application)

Introduction

This hearing dealt with cross applications. In the Tenant's Application for Dispute Resolution he sought a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement and return of double his security deposit. In the Application for Dispute Resolution by the Landlords they sought a Monetary Order for unpaid rent, for loss of rent, for compensation under the Act and the tenancy agreement, for damage and cleaning of the rental unit, for an Order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Tenant appeared at the hearing. As the Landlords did not attend, I dismiss their application without leave to reapply.

The Tenant gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me. The Tenant also submitted video and audio recordings of his interactions with the Landlord as well as photos of his items, and a receipt for his glasses. The Tenant confirmed he served the digital evidence on the Landlord, as well as his documentary evidence. Introduced in evidence was a registered mail receipt dated November 19, 2014 which confirmed the Tenant served the Landlord with the Notice of Dispute Resolution Hearing as well as the 15 pages of documentary evidence and USB drive containing the Tenant's digital evidence.

Under the Act documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of November 26, 2014.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Is the Tenant entitled to return of double the security deposit?

Background and Evidence

The Tenant testified that the tenancy began March 24, 2014. Monthly rent was payable in the amount of \$500.00 and he claims he paid a \$250.00 security deposit.

The Tenant testified that on September 25 or 26, 2014 the Landlord, the Landlord's son, also named R.H., and the property manager, "T", removed the Tenant's belongings from the rental unit, threw them out on the street and prevented the Tenant from accessing the rental unit or retrieving the items.

The Tenant testified that the only receipt he had in his possession, and which was introduced in evidence, was the \$609.00 receipt he had for his prescription glasses. He stated that all other documentary evidence was contained within his rental unit and thrown out by the Landlord when he was "illegally evicted on 24 hours-notice".

Introduced in evidence were two video recordings the Tenant took on his cellular phone on or about September 25, or 26, 2014 and which clearly depict the Landlord, his son, and the property manager packing up and removing the Tenant's belongings. At one point in time the Landlord appears to drop something on the Tenant's foot, causing the Tenant to cry out in pain. The first video ends with the Landlord pushing the phone into the Tenant's face.

Although I do not wish to reproduce the video in its entirety, it is notable that during the video, the Landlord and the property manager are heard saying (among other comments) the following:

- "you've got to pay rent to do that";
- "you can come back tomorrow and grab whatever you want";
- "you can't stay here for free"; and
- "in our eyes you are not to come back".

The Tenant is heard saying to the Landlord (among other comments):

- “you are illegally removing my items”;
- “I executed my paper work properly”; and,
- “I am keeping the keys because I am still in possession of this place”.

Also introduced in evidence were audio recordings which the Tenant stated were taken shortly before the September 25 or 26, 2014 incident. In these recordings, the Landlord and Tenant are discussing the outstanding rent.

The Tenant also introduced photos of the items removed by the Landlord.

The Tenant testified that he only retrieved a small bag with a few of his clothes as that was all that the Landlord gave to him. He stated that he did not retrieve the majority of his items as they were “un-retrievable after they sat outside for a week, were destroyed because of the weather and third parties removing items from the pile”. The Tenant stated that the Landlord threw most of his belongings in the garbage.

The Tenant testified that he believed he could only ask for \$3,500.00 and as such did not make a claim for his bike (which he valued at \$2,500.00), his bed (which he valued at \$900.00) and his bedding (which he valued at \$100.00 to \$200.00). These items were not considered in this my decision and the Tenant is at liberty to apply for a further Monetary Order for these items.

The Tenant sought the sum of \$3,000.00 for the balance of his belongings which are clearly visible in the video recording and for which the Tenant provided the following evidence:

1. A 46 inch television which the Tenant says he purchased in 2012 and paid \$1,500.00;
2. A computer which was the Tenant says he purchased in 2012 for \$1,000.00 to \$1,200.00;
3. Clothing, including the Tenant’s work clothing, which the Tenant estimated as valued at \$400.00 to \$500.00;

4. Approximately \$100.00 to \$200.00 in packaged food;
5. A bow and arrow which the Tenant valued at \$75.00;
6. Family photos, which included three picture frames and which the Tenant stated were “priceless”;
7. His prescription eye glasses in the amount of \$609.00; and
8. Toiletries, towels and cleaning supplies which the Tenant valued at \$75.00.

The total of the above items as valued by the Tenant, not including the Tenant’s bike, bed and bedding, exceeds \$7,000.00. The Tenant confirmed that he was not in a financial position to replace the items.

The Landlords did not attend the hearing to dispute the Tenant’s claim.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlords could retain any portion of the security deposit.

Although the Landlords applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38, they did not attend the hearing.

The security deposit is held in trust for the Tenants by the Landlords. At no time do the Landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the Landlords and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlords must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that the Landlords feel they are entitled to keep the deposit, based on unproven claims. The Landlords may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written

agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenants the sum of **\$500.00**, comprised of double the security deposit (2 x \$250.00).

In the video submitted by the Tenant, the Landlord, R.H., and his property manager, are heard making comments that the Tenant has not paid rent; however, there is no evidence that an Order of Possession had been made.

Only an authorized court bailiff can legally remove the Tenant and the Tenant's belongings from a rental property.

The videos submitted by the Tenant provide compelling evidence of the Landlord, the Landlord's son and the property manager, removing the Tenant's belongings from the rental unit. The Landlord, his son, and the property manager, had no right to enter the rental unit, or remove the Tenant's belongings.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I accept the undisputed testimony of the Tenant that the Landlords prevented the Tenant from retrieving his belongings. The loss suffered by the Tenant was a direct result of the Landlord, the Landlord's son and the Property Manager's actions in removing the Tenant's belongings and their actions were in clear violation of the Act.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I accept the Tenant's undisputed evidence as to the value of the Tenant's items removed and or damaged by the Landlord (save and except for the value of his bike, bed and bedding which I accept was not included in his application). I further accept the Tenant's evidence that any supporting evidence and documentary proof which may have supported those valuations was likely removed by the Landlords. The total of the estimated values provided by the Tenant exceeds \$7,000.00; notably, a review of the video shows his personal possessions to be in good condition prior to being illegally removed by the Landlords and as such I find that the amounts attributed to each item to be reasonable.

I accept the Tenant's undisputed testimony that he was prohibited from retrieving his items, after their illegal removal, and was in essence unable to mitigate his loss. In all the circumstances, I find that the Tenant has met the burden of proving his claim.

As the Tenant claimed \$3,500.00, on the Tenant's Application for Dispute Resolution, and I have awarded him \$500.00 for return of double the security deposit paid, the maximum value I can ascribe to items lost by the Tenant, (save and except for the value of his bike, bed and bedding which was not included in his application) is \$3,000.00.

Although it is likely that the value of these items exceeds \$3,000.00, the Landlords were only given notice that the Tenant sought the total sum of \$3,500.00. To award more to the Tenant would offend the principles of Natural Justice and in particular, the Landlord's right to know the case to be met.

In consideration of the above, and on the balance of probabilities, I grant the Tenant's request for a Monetary Order pursuant to section 67 in the amount of **\$3,500.00**. This Order must be served on the Landlords and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that court.

The Tenant is at liberty to apply for a further Monetary Order for the loss of his bike, bed and bedding.

Conclusion

The Landlords did not attend the hearing and accordingly their application is dismissed without leave to reapply.

The Landlords breached the *Act*, in not returning the Tenant's security deposit and must pay double the amount, namely, \$500.00 to the Tenant.

The Landlords breached the *Act* in removing the Tenant's belongings from the rental unit. The Tenant proved that he suffered a loss of the value of those items. The Tenant's undisputed testimony of the value of the items lost, as well as the photographic and video evidence submitted by the Tenant, confirms the amount estimated by the Tenant to be reasonable. The principles of natural justice prohibit an award more than the \$3,500.00 claimed, such that the Tenant is awarded the sum of \$3,000.00 for the items lost.

The Tenant is at liberty to apply for a Monetary Order for the value of the loss of his bike, bed and bedding, which he testified were not included in his claim.

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: June 09, 2015

Residential Tenancy Branch

