



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, FF

Introduction

This hearing was convened in response to an application by the tenant under the *Residential Tenancy Act* (the Act) for a monetary order for loss under the Act: specifically for loss of use, return of their security deposit, return of personal belongings and to recover their filing fee.

Both parties participated in the hearing with their submissions and relevant testimony during the hearing. The parties were also provided with an opportunity to settle their dispute. The landlord was assisted in this matter. The tenant submitted some document evidence which they acknowledged they did not send to the landlord. As a result the tenant's submission of document evidence is inadmissible and has not been considered in this Decision. None the less, the tenant was given opportunity to provide their evidence orally in testimony and the landlord was given opportunity to respond. The landlord stated they did not provide any evidence to this matter and was given opportunity to provide their testimony. Prior to concluding the hearing both parties acknowledged presenting all of the *relevant* evidence they wished to present.

Issue(s) to be Decided

Is the tenant entitled to the amount claimed?

Should the landlord be Ordered to return to the tenant their personal belongings?

Background and Evidence

The rental unit of this matter is a bedroom rented to the tenant by the Respondent: who were themselves a tenant of the larger rental unit (primary unit). It is undisputed the tenancy started

December 15, 2014 as a verbal agreement to rent the bedroom month to month. The parties disagree on the monthly amount paid for rent. The tenant was forthright they paid \$450.00 and the landlord was forthright the tenant paid \$400.00. At the start of the tenancy the landlord collected a security deposit which the landlord retains in trust. Additionally, the tenant was forthright they paid \$225.00 as a security deposit and the landlord was forthright the tenant paid \$200.00.

The parties agree that the applicant tenant paid the respondent landlord the rent for March 2015 and was, otherwise current in the rent.

The parties agree that on March 12, 2015 the landlord of the primary unit enforced an Order of Possession through the services of a Bailiff and the applicant tenant's belongings were packed separately: claimed by the tenant to be in 3 boxes and a bed mattress and box spring. The tenant testified that subsequently they and the respondent landlord's son moved the tenant's bed to the home of the tenant's daughter where it remains. The respondent landlord testified that they stored the tenant's remaining belongings with their own at a storage facility and that they remain in possession of what they stored for the tenant and that they are able to reunite the belongings with the tenant. The parties agreed the respondent landlord could return the belongings they hold to the home of the tenant's daughter. The respondent landlord testified that amongst the belongings they have a, *hat, some clothes and some "snake leather"*, which the tenant identified as part of their belongings. The landlord testified there may be other items and that they can amass all they have in storage for delivery to the tenant.

The tenant seeks the return of their security deposit, their belongings held by the landlord, and the balance of rent for March 2015 for loss of use of the rental unit. Neither party testified as to the administration of the security deposit; however it is acknowledged the deposit was not returned. The tenant also seeks to recover their mailing costs in respect to this application

Analysis

The burden of establishing their claim on the balance of probabilities rests with the applicant of this matter. On preponderance of the testimonial evidence in this matter I have reached a Decision.

On the testimony of the respective tenant and landlord I find the landlord holds the tenant's security deposit and under the circumstances which the tenancy ended they have 1) not filed a claim to retain it for damage to the unit, 2) their right to retain it or apply to retain it is now extinguished, and 3) did not advance any reason or evidence for retaining it. The tenant did not testify if or when they provided the landlord with their forwarding address to return the deposit, therefore they are not entitled to double the deposit in accordance with the provisions in Section 38 of the Act. None the less, I find it is appropriate that the original amount of the deposit be returned to the tenant.

On the testimony of the respective tenant and landlord I find the landlord collected the rent for March 2015 however failed to provide the tenant with living accommodation from March 13, 2015 to the end of the paid period - at no fault of the tenant, and as a result of the conduct of the respondent landlord. As a result, I find the tenant is owed a fractional amount of the rent for loss of use of the bedroom, represented by 58% of the paid rent for March 2015.

I find that the tenant's bed rests with their daughter, and not with the landlord, and is available to the tenant to retrieve it.

I find the landlord holds a moderate number of items belonging to the tenant and they are willing to return all items in their possession back to the tenant. The parties agreed the landlord could do so by taking what items they hold to the home of the tenant's daughter. As a result, **I Order** that the landlord return to the tenant all items in their possession belonging to the tenant forthwith, including, but not limited to a *hat, some clothes and some "snake leather"*.

It must be noted that all parties are responsible for their own *litigation costs* of which mailing costs a part. Therefore **I dismiss** this portion of the tenant's claim.

As the tenant has been partially successful in their claim I grant the tenant recovery of their filing fee of \$50.00.

In respect to the parties' contrasting testimony as to the amount of the security deposit and the amount for rent, I find that in the absence of agreement, or admissible evidence in this matter, I set the respective amounts at \$425.00 for rent, and \$212.50 for the security deposit. As a result,

Calculation for Monetary Order:

compensation for loss of use – 58% of \$425.00	246.50
Original security deposit – half of \$425.00	212.50
Filing fee	50.00
total monetary award to tenant	509.00

Conclusion

The tenant's claim on application, in part has been granted, and the balance of which is **dismissed**.

I have **Ordered** that the landlord return to the tenant all items in their possession belonging to the tenant forthwith, including, but not limited to a *hat, some clothes and some "snake leather"*.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$509.00**.

This Order is given to the tenant. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: September 02, 2015

Residential Tenancy Branch

