



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, RPP, FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38;
- an order requiring the landlord to return the tenant's personal property, pursuant to section 65; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 84 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. "Witness MK" testified on behalf of the tenant and the tenant had an opportunity to question the witness.

The tenant testified that the landlord was served with the tenant's application for dispute resolution hearing package on October 28, 2016 by way of registered mail to the landlord's residence. The tenant provided a Canada Post receipt and tracking number with this application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application on November 2, 2016, five days after its registered mailing.

The tenant confirmed that she did not require an order for the landlord to return her personal property. Accordingly, this portion of the tenant's application is withdrawn.

Issues to be Decided

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

Is the tenant entitled to a return of double the amount of the security deposit?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to 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 claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began on December 1, 2010. Monthly rent in the amount of \$1,750.00 was payable on the first day of each month. A security deposit of \$850.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant provided a copy of a cheque, dated November 4, 2010, for \$850.00 in the landlord's name, as well as copy of her bank statement, showing that the cheque was withdrawn on November 8, 2010. Both parties signed a written tenancy agreement but a copy was not provided for this hearing.

The tenant stated that she had agreed with the landlord's son that her tenancy was supposed to end on September 30, 2016. She said that the landlord locked her out of her rental unit on September 24, 2016, by changing the locks. She maintained that she had not yet finished moving out and many of her personal belongings and furniture were still left inside. She explained that she entered through an open window of the rental unit on September 24, 2016, and the landlord's son arrived a few minutes later so she came outside and he called the police. She stated that the landlord's son's brother came shortly after and she felt threatened by the two of them, especially with her young son watching the whole incident. She testified that the police told her that she had the right to possession of the unit as a tenant but they recommended she leave in order to avoid further escalation. The tenant provided letters and emails that she sent to the landlord and her son after the above incident to assert her rights under the *Act* and gain access to the unit to retrieve her items. The tenant also provided an itemized list of her items left behind. She stated that the landlord never allowed her access to the unit to retrieve the remaining items.

Witness MK testified that she heard about the above incident from the tenant. The tenant maintained that she suffered a loss of quiet enjoyment and emotional distress due to the above incident which was frightening and embarrassing for her and her son. The tenant said that the landlord illegally changed the locks, prevented her access and kept her furniture and other items. She seeks a monetary order of \$1,000.00 for this claim.

The tenant testified that a move-in condition inspection report was completed for this tenancy but a move-out condition inspection report was not. The tenant said that she provided a forwarding address in writing to the landlord by way of a letter, dated September 26, 2016,

which was left in the landlord's residential mailbox on the same date. The tenant provided a copy of this letter for this hearing. Witness MK confirmed that she read this letter and witnessed the service of this document on the landlord. The tenant said that she did not provide the landlord with written permission to keep any amount from her security deposit and she did not receive an application from the landlord to retain the security deposit. The tenant seeks a return of double the amount of her security deposit, totaling \$1,700.00, because the landlord did not return it or file an application to claim against it.

The tenant seeks compensation for the items that were left behind in the rental unit when the landlord locked her out. She said that she does not know whether the items are still in the rental unit or whether she can retrieve them, so she wants the value of them back, rather than a return of the personal property. She seeks \$2,968.00 for a gas fireplace insert, which she added in order to make use of the wooden fireplace area and to create extra warmth in the unit. She stated that she paid the above amount to purchase it in 2011. She provided two cheques with bank stamps showing they were honoured by the bank, one dated for February 8, 2011 in the amount of \$2,000.00 and one dated March 1, 2011 in the amount of \$968.00. Witness MK testified that she went over to the tenant's rental unit approximately 20 times while the tenant lived there between 2010 and 2016 and she saw the tenant add the gas fireplace insert to the wooden fireplace and use it during her tenancy.

The tenant seeks \$536.98 for a kitchen base cabinet with three drawers and a countertop and \$338.99 for a kitchen high cabinet with two drawers. The tenant seeks \$55.00 for a kitchen wall cabinet with no doors and \$99.00 for another kitchen wall cabinet. The tenant further seeks \$149.00 for six shelves which she put in the living room surrounding the fireplace. The tenant seeks \$119.00 to replace a bathroom cabinet. The tenant provided an invoice from a contractor who installed the above items at the rental unit on March 29, 2011 for a total of \$2,472.04. Witness MK testified that she saw the above items added and used at the rental unit when she visited the tenant between 2010 and 2016.

The tenant said that she added all of the above items to the kitchen, living room and bathroom to improve those areas and add storage space for her family. The tenant provided quotes for all of the above items if purchased new, from the same store that she bought them from. The tenant stated that she had arranged for a contractor to remove all of the above items from the rental unit at the end of the tenancy but she was unable to gain access to the unit because the landlord changed the locks. The tenant maintained that the above items were not replacements, only additions to the already-existing cabinets and furniture at the rental unit, so they could be easily removed from the unit.

The tenant provided a copy of an email, dated September 17, 2016, confirming that the landlord's son agreed to purchase all of the above furniture from the tenant for \$950.00, with the exception of the gas fireplace insert and the bathroom cabinet. She stated that when she verbally advised the landlord about this agreement on September 21, 2016, the landlord revoked the offer and threatened to deduct amounts from the tenant's security deposit if she

sold them to the landlord's son. The tenant testified that she then advised the landlord that she would remove these items from the rental unit and when she attempted to do so, she was locked out on September 24, 2016.

Analysis

Loss of Quiet Enjoyment

Section 29 of the *Act* requires the landlord to give the tenant written notice prior to entering the tenant's rental unit. Alternatively, the tenant can give permission at the time of entry. In this situation, the landlord's son entered the rental unit without giving prior written notice and without obtaining the tenant's permission at the time of entry. Therefore, the landlord, through her agent son, violated section 29 of the *Act*.

Section 31 of the *Act* states that the landlord cannot change the locks to the rental unit unless the tenant agrees to the change and the landlord gives the tenant new keys or other means of accessing the rental unit. In this situation, the landlord changed the locks to the rental unit and prevented entry by the tenant on September 24, 2016. Therefore, the landlord violated section 31 of the *Act*.

Section 28 of the *Act* states that the tenant is entitled to quiet enjoyment, including reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject only to the landlord's right to enter in accordance with section 29 of the *Act*. I find that the landlord breached section 28 of the *Act* by violating the tenant's right to reasonable privacy and exclusive possession of the rental unit by entering the unit without permission and changing the locks to prevent entry by the tenant on September 24, 2016.

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 suffered a loss of quiet enjoyment, due to the landlord's and the landlord's son's actions. The tenant was entitled to reasonable privacy and exclusive possession of the rental unit until September 30, 2016. The tenant suffered losses as a result of the landlord's breach of sections 28, 29 and 31 of the *Act*. The tenant lost her

furniture and personal items that were left behind in the rental unit. The tenant had to deal with the landlord's son and his brother as well as the police, who all confronted her during an embarrassing and frightful incident in front of the tenant's son on September 24, 2016. As per RTB Policy Guideline 16, where no significant loss has been proven but there has been an infraction of legal rights, an Arbitrator may award nominal damages. Based on this principle, I award the tenant nominal damages of \$200.00.

Damages

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the tenant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the tenant \$950.00 of the \$1,178.97 sought for the replacement of the kitchen and wall cabinets, drawers, countertops and living room shelves. The tenant provided an email from the landlord's son indicating that he agreed to purchase these items. There is no subsequent email or written confirmation from the landlord or the landlord's son that the offer was revoked.

Although the tenant said that she was verbally told by the landlord that she would not honour her son's offer, the agreement was between the tenant and the landlord's son. Further, I find that these items were added by the tenant to improve the rental unit and that the landlord has benefited from these improvements, which were purchased by the tenant. I find that the above reduced amount also accounts for the depreciation of the items since they were purchased and used during the tenancy.

I award the tenant \$90.44 of the \$119.00 sought for the replacement of the bathroom cabinet. I find that the tenant added this improvement to the bathroom and the landlord benefited from it. The tenant provided a quote for a new bathroom cabinet of \$119.00. However, the tenant said that she purchased the cabinet around the time that she moved in, which was almost six years ago. As per Residential Tenancy Policy Guideline 40, the useful life of a bathroom cabinet is 25 years. Therefore, I awarded the tenant the value of a new bathroom cabinet minus six years of usage ($6/25 = 0.24 \times \$119.00 = 28.56 = \$119.00 - 28.56 = \$90.44$).

I award the tenant \$1,484.00 of the \$2,968.00 sought for the gas fireplace insert. The tenant provided documentary proof in the form of cashed cheques to show that she paid \$2,968.00 for

the gas fireplace insert in February and March 2011. Although fireplace inserts are not specifically included as an item in Residential Tenancy Policy Guideline 40, I reduced the value of the new item by 50% to account for depreciation and usage for an almost six-year use.

Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later 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 an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I accept the testimony of the tenant and witness MK that a letter containing the tenant's written forwarding address was left in the landlord's mailbox on September 26, 2016, as allowed under section 88 of the *Act*. I find that the landlord was deemed served with this letter on September 29, 2016, three days later, as per section 90(d) of the *Act*. The tenant did not give the landlord written permission to retain any amount from her security deposit. The landlord did not return the deposit or make an application for dispute resolution to claim against the deposit.

The landlord continues to hold the tenant's security deposit of \$850.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of her security deposit, totalling \$1,700.00, from the landlord.

As the tenant was mainly successful in this Application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$4,524.44 against the landlord. 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 the tenant's 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: November 28, 2016

Residential Tenancy Branch

