



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC RPP

Introduction

This hearing was convened in response to an application filed by the tenant October 24, 2016 seeking the return of their personal property or compensation for loss under the Act, regulation or tenancy agreement in the amount of \$6500.00.

Both parties attended the hearing and were each given opportunity to discuss their dispute, present relevant evidence, make relevant submissions, and provide testimony. The tenant acknowledged they had not provided any document evidence to this matter. The landlord submitted 43 pages of document evidence with proof they sent the evidence by registered mail to the tenant; however the tenant claims they did not receive the evidence nor were they notified by Canada Post of registered mail pending. The landlord's document evidence was accepted and all of it which was discussed and considered was explained to the tenant and confirmed by them. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be determined

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The relevant evidence in this matter is as follows. The tenancy started January 01, 2015 and has since ended. The payable monthly rent was \$1000.00 per month.

On July 04, 2015 the landlord posted a Notice to End for unpaid rent on the tenant's door. On the eighth day after the deemed received date (July 07, 2015) of the Notice the landlord applied for an Order of Possession by Direct Request, which was subsequently adjudicated and granted July 22, 2015 with an effective date 2 days after service on the tenant.

The landlord testified they posted the Order of Possession on the tenant's door on July 22, 2015 with a note informing the tenant they were to vacate by July 24, 2016. Despite the tenant's belongings still occupying the rental unit the landlord changed the access lock to the rental unit the morning of July 26, 2016 as they assumed the unit was abandoned. The landlord testified the Order of Possession posted on the rental unit door had been removed and the unit "did not look occupied". On the day the lock was changed, the tenant's sister attempted to access the unit and realized the changed lock. An argument ensued with the sister in respect to the inaccessible unit and Police were called. The landlord claims the Police purportedly told the sister to stay away from the unit. The landlord claims a *restraining order* was put into force in respect to the tenant and their sister but had not seen the order and did not know the particulars of such an order, or how the order was worded. The landlord did not call or otherwise attempt to contact the tenant. Later the same week the landlord removed all of the tenant's belongings from the unit. The landlord testified that it was in preparation for re-renting it the following month.

The tenant testified they were away working in Calgary AB from July 01, 2015 to July 09, 2015. They testified they were trying to pay the owed rent when they came to understand the landlord had applied for an Order of Possession and awaited the decision. The tenant claims they were never contacted by Police or the landlord in respect to any Police intervention or of a restraining order and are not aware of their sister having been contacted. The tenant testified they came home in the early morning hours of July 27, 2015, or possibly an adjacent day of that week and discovered they could not enter their unit. The tenant testified they simply did not immediately pursue any matter respecting the tenancy as they felt intimidated by the landlord. The tenant testified they left a note for the landlord in mid-October 2015 asking the landlord to allow them access to obtain their belongings and informing the landlord of their situation and leaving a phone number. The tenant testified they had lost their phone and as result could not contact them earlier. The tenant claims that in amongst many personal belongings were important personal documents including identification such as their birth certificate and passport. The landlord testified they did not go through the tenant's paper belongings. They testified they simply placed all paper and other assumed

personal items into bags and boxes, and were not aware of the contents. The landlord testified that after removing the tenant's items from the unit they did not contact the tenant. However the landlord testified they stored the tenant's items for almost 8 months before donating it: for which they provided a receipt into evidence. The landlord testified they have no knowledge of any of the tenant's personal papers as claimed by the tenant and currently do not possess any of the tenant's belongings.

The tenant has not supported their monetary claim with provision of a list of belongings or other means of proving the value of their claimed loss. The tenant testified they have felt devastated over their loss and lost access to any of their receipts for their items because of the landlord's actions.

Analysis

I accept the landlord received an Order of Possession dated July 22, 2015 effective 2 days from the day it is served on the tenant. I find the landlord was provided information and instructions as how to enforce the Order of Possession. I accept the landlord posted the Order on the tenant's door on the same day. **Section 90(c)** of the Act deems that a document (Order of Possession) served by attaching a copy to a door as served on the tenant on the 3rd day *after* it is posted or attached to a door: that being July 25, 2015. After which date the tenant had 2 days to vacate the rental unit in accordance with the Order: that being July 27, 2015. The evidence is that the landlord acted to deny the tenant access before the Order of Possession was effective: July 26, 2015.

I have not been presented with evidence establishing the landlord had sufficient evidence to determine the tenant had abandoned the rental unit. Moreover, the landlord was not in a legal position to repossess the rental unit in denying access to the tenant simply by posting the Order of Possession on the tenant's door. If the tenant did not comply with the Order of Possession it was available to them to obtain a Writ from the Courts after July 27, 2015 to enforce the Order. The landlord chose to change the lock of the rental unit.

Section 30 of the Act, in relevant part states as follows

Tenant's right of access protected

- 30** (1) A landlord must not unreasonably restrict access to residential property by
- (a) the tenant of a rental unit that is part of the residential property, or
 - (b) a person permitted on the residential property by that tenant.

Section 31 of the Act, in relevant part states as follows

Prohibitions on changes to locks and other access

- 31** (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.
- (1.1) A landlord must not change locks or other means of access to a rental unit unless
- (a) the tenant agrees to the change, and
 - (b) the landlord provides the tenant with new keys or other means of access to the rental unit.

I find that if the landlord had acted differently and in accordance with the Act these proceedings may likely have been averted. I find the landlord illegally prevented the tenant from accessing

the rental unit and their belongings, but moreover compromised the possibility of an orderly legal transition of possession back to the landlord.

The tenant asserted they sought to recover their belongings including personal documents, all of which the landlord asserts they no longer hold and in respect to some of the items claimed the landlord testified they are not aware if they once held them. I find it was the landlord's obligation pursuant to the **Residential Tenancy Regulation Part 5 – Abandonment of Personal Property** to keep a written inventory of the purported abandoned personal property, but they did not.

In the absence of sufficient evidence respecting the value of the tenant's loss I find it appropriate to grant the tenant *nominal compensation*. An Arbitrator may award nominal damages or a nominal award which is an award granted where no significant loss has been proven, but the award is affirmation that there has been an infraction of a legal right. As a result of all the above I set the tenant's nominal compensation in the amount of **\$1000.00**.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$1000.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application is granted in the awarded amount.

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: January 04, 2017

Residential Tenancy Branch