



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD OLC LRE CNC RP RR

Introduction

Neither party attended the hearing but an authorized agent for the tenant attended and gave testimony. She asked for an adjournment as the tenant was on a trip and did not believe she had the means to call long distance into the conference. The agent said the tenant served the Application for Dispute Resolution personally on the landlord and the agent confirmed he had received "the envelope" from the tenant. I find the documents were legally served pursuant to section 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain compensation of one month's rent (\$650) for illegal eviction and changing the locks contrary to section 31 of the Act;
- b) To obtain compensation for damages she incurred due to the landlord locking her out illegally.

Preliminary Issue:

The tenant's advocate asked for an adjournment as she said the tenant received a trip as a gift and did not know that she could call toll free into the conference. She does not have the means to pay long distance charges. She asked the landlord for consent to an adjournment pursuant to section 6.1 of the Residential Tenancy Branch Rules of Procedure but he refused.

Rule 6.3 provides an arbitrator may adjourn the proceeding after the hearing commences. The criteria for granting an adjournment are set out in Rule 6.4. In applying the criteria, I find there is an agent with a good knowledge of the facts attending the conference to represent the tenant. Based on the documentary evidence supplied by the tenant, I find it is very unlikely that an adjournment will contribute to the resolution of the matter. She has provided no receipts to support her claim and it appears the relationship with the landlord is very hostile. I find the expressed need for the adjournment arises out of the intentional act of the tenant in arranging her trip at a time conflicting with her hearing. After considering the criteria and the circumstances, I declined to grant an adjournment. I considered that the tenant was well represented by her agent and a witness who supplied some facts also so the hearing proceeded.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they were illegally evicted and the locks wrongfully changed to lock them out? If so, are they entitled to compensation and in what amount? Is the tenant entitled to the return of her security deposit?

Background and Evidence

Only the agent and a witness for the tenant attended the hearing although the landlord was notified of the hearing. The agent was given opportunity to be heard, to provide evidence and to make submissions. The evidence as recounted by the agent and the documents is that the tenancy commenced almost a year ago, rent is \$650 a month (paid by the ministry) and a security deposit of \$325 was paid. The tenant in her application said the landlord served no Notice to End Tenancy in the formal form but gave her written notice on September 11, 2017. He informed her she had breached two rules but she received nothing in writing informing her of this during her 10 month tenancy.

When she served an Application for Dispute Resolution on September 24, 2017, the landlord yelled at her and threatened to lock her out and threw her Application back at her. On September 28, 2017 as she walked in the garden, the landlord would not let her pass and hit her arm so she spilled hot coffee on herself. She called the Police who attended and talked to the parties. On September 29, 2017, the landlord harassed her when she was going to her room and he later changed the locks. He informed her that he had put her stuff in the garage. She was left homeless. She requests a monetary order for the following:

- 1) \$520; to compensate friends with rent for couch surfing
- 2) \$100; to compensate a friend for getting items for her
- 3) \$100; for mileage/gas for their car
- 4) \$325; for refund of her security deposit
- 5) \$100; for food spoilage as the landlord removed her food items.
- 6) \$650; for rent refund for October or aggravated damages.:

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

Although the tenant shares a kitchen with the landlord, I find section 4 of the Act does not apply as the landlord is not the owner of the home. I find I have jurisdiction in this matter.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, 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.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the tenant who is the applicant to prove on the balance of probabilities that the landlord through act or neglect caused her losses. I find the tenant's evidence credible that the landlord did not serve her a Notice to End Tenancy in the formal form as required by section 47 and 52 of the Act. I find he violated the Act in this respect. I find the weight of the evidence is that he ended her tenancy illegally and locked her out at the end of September 2017. I find this illegal action caused extreme hardship to the tenant. While the tenant has provided evidence of the first three elements necessary under section 7 of the Act, I find she has provided insufficient evidence of the value of the loss.

In respect to damage claims, Residential Policy Guideline 16 provides guidance as follows:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

☐ *Nominal damages "are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

☐ *Aggravated damages "are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.*

I find the tenant has been unable to provide receipts for amounts claimed as they are for amounts to reimburse friends who helped her when she was abruptly left homeless. I find she has proved the landlord contravened her legal right to legal notice to end her tenancy and her right to dispute that notice by changing the locks on her door and denying her entry. I find she is entitled to a nominal award of \$200 for expenses she incurred for transportation to pick up her goods and replace food lost. I dismiss her claim for \$520 to compensate friends with rent for couch surfing due to insufficient evidence of costs.

Furthermore, I find the tenant has suffered damages that cannot be fully compensated with an award for damage or loss with respect to property. I find the landlord illegally evicted her from her home and removed her property to the garage without her consent. I find the weight of the evidence is that she was homeless late in the evening for he had changed the locks. I find her request for aggravated damages equivalent to one month's rent (\$650) is reasonable in the circumstances. I find her entitled to \$650 for aggravated damages.

In respect to her security deposit of \$325, I find she has not provided her forwarding address in writing to the landlord with a request for a refund of her deposit. Section 38 of the Act states the landlord has 15 days from the later of the tenant vacating and providing her forwarding address in writing. I find her application for the return of her deposit is premature. I dismiss this portion of her claim and give her leave to reapply after she has provided a forwarding address in writing to the landlord. I note this can be an address of a friend or relative where she can receive mail if the tenant does not have a fixed address at this time.

Conclusion:

I find the tenant entitled to a monetary order as calculated below. I dismiss her application for the refund of her security deposit and give her leave to reapply for that and other damages for which she has receipts.

Nominal Award – no receipts	200.00
Aggravated damages	650.00
Total Monetary Award to Tenant	850.00

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: December 12, 2017

Residential Tenancy Branch