



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 pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order for the Landlord’s compliance - Section 62.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. Both Witnesses gave evidence under oath.

Preliminary Matter

At the outset of the hearing the Landlord identified the second participant as her son who was attending the hearing to assist the Landlord with language support. After the Landlord gave its initial evidence the son wished to provide evidence. As the son had been listening to the evidence to that point and had not been excluded as a witness, the Tenant was given an opportunity to object to the son giving evidence as a witness. The Tenant’s advocate did not object and the son then provided evidence and is identified on the cover page and herein as a Witness for the Landlord.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy of a furnished unit under written agreement started on December 1, 2016. Rent of \$800.00 was payable on the first day of each month. The Parties have already dealt with the security deposit.

The Tenant states that the Landlord served the Tenant with papers to attend a hearing in July 2017 however the Tenant did not attend the hearing. The Tenant states that a Decision dated July 20, 2017 granted the Landlord an order of possession however the Tenant has never seen the Decision or been served with the order. It is noted that the order of possession was granted effective July 31, 2017.

The Tenant states that upon arriving at the rental unit on July 30, 2017 the Tenant found that it could no longer enter the unit using the security code on the garage. The Tenant states that this is the only entry available for the Tenant to enter the rental unit. The Tenant states that the Landlord had removed the batteries for the security panel leaving it inoperable. The Tenant states that the Landlord was repeatedly called however the Landlord never answered or returned the calls. The Tenant states that as a result of not being able to enter the unit the Tenant had to stay with a friend for a couple of nights and was then in a shelter for the next three months. The Tenant states that he is currently still looking for a permanent home but is no longer at a shelter. The Tenant claims \$500.00 in compensation for having undergone the stress of being locked out of the unit by the Landlord without right. The Tenant's Advocate states that this amount was calculated based on an average of the awards made in similar situations in past RTB decisions.

The Tenant states that on or about August 9, 2017 the Tenant returned to the rental unit and found some of its belongings outside the garage, some on the ground and some in boxes. The Tenant states that several belongings were not present and the Tenant claims compensation of \$1,238.00 for the loss of the items listed in its evidence package. It is noted that with the exception of two items, the items are listed with the

monetary value being claimed set out with the list. The Tenant did not provide any receipts, invoices or estimates for the values claimed or the items since replaced.

The Landlord states that after receiving the order of possession it was posted on the door of the unit and another copy was placed inside the unit. The Landlord states that after two or three weeks the Tenant had not shown up and the Landlord believed the Tenant had vacated the unit. The Landlord states that the security panel was never disabled and suggests that perhaps the Tenant is lying about this. The Landlord states that the Tenant left the unit one day and did not return for three weeks. The Landlord does not know the date the Tenant returned to the unit. The Landlord states that the Tenant was told to go into the unit and take whatever he wanted. The Landlord states that the Tenant collected his belongings and left in a taxi leaving behind only garbage and a TV.

The Landlord's Witness states that the Tenant left the unit after July 20, 2018 for about a week. The Landlord's Witness states that after the Tenant had been gone for a few weeks a notice for entry into the unit was placed on the unit after which the Witness entered the unit, took photos of the unit and cleaned the unit. The Witness states that everything that was left by the Tenant was placed in boxes except for items that appeared to be garbage and these items were thrown out. The Witness states that most of the belongings were worthless. The Witness states that the boxes were left in the garage for the Tenant to pick up. The Witness states that about three weeks later the Tenant returned to the unit, picked up his boxes and left in a taxi. The Witness states that as they did not realize that the TV belonged to the Tenant the TV was not placed in the garage with the Tenant's other belongings. The Witness states that the TV has since been determined to belong to the Tenant and that the Tenant is free to come and collect the TV. The Witness states that he never disabled the security panel and that the Tenant's entry was never stopped.

The Tenant states that when he came to the unit on August 9, 2017 it was with a friend in the friend's car and not by taxi. The Tenant's Witness states that he does not drive a taxi and that he gave the Tenant a ride to the rental unit in his own vehicle sometime in the first week of August 2017. The Witness states that the Tenant's stuff was sitting outside in boxes and on the ground. The Witness states that they loaded the 2 or 3 boxes into the back seat of the car and left. The Witness states that the boxes were outside of the unit before the Landlord's Witness came out. The Landlord's Witness agrees that the Tenant arrived with its Witness.

The Tenant claims \$500.00 for having been locked out of the unit and access refused without right. The Tenant claims \$1,238.00 for missing belongings.

Analysis

Section 57(2) of the Act provides that a landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. The Tenant gave overall clear, detailed and consistent evidence supported by its Witness. Both the Landlord's and the Landlord's Witness evidence of the Tenant's presence at the unit is vague and not very persuasive. The Landlord's evidence of a taxi is not credible in the face of the Tenant's Witness evidence. The Landlord gives evidence that the Tenant was invited into the unit to collect its belongings and yet the Landlord's Witness gives contradictory evidence that the Tenant's belongings were all taken to the garage. The Landlord's Witness gave evidence that photos of the Tenant's belongings were taken and yet none were provided as evidence to support the Landlord's evidence of the Tenant's worthless belongings. For these reasons I prefer the Tenant's evidence overall and find on a balance of probabilities that the Landlord stopped the Tenant from occupying the unit on July 30, 2017, when the order of possession was not yet effective, and that the Landlord did not return all of the Tenant's belongings in August 2017.

Accepting the Tenant's evidence of becoming homeless on July 30, 2017, but noting that the Tenant was required to have vacated the unit a day later, I find that the Tenant has only substantiated a nominal amount of **\$100.00**. Given the lack of supporting evidence of the value of any of the items claimed but recognizing a reasonable amount for losses such as food, some clothing, and personal items, that I accept were not returned I find that the Tenant has only substantiated an entitlement to a reasonable sum of **\$250.00** for the loss of these belongings.

As the Landlord still has the television I order the Landlord to contact the Tenant or its advocate and make arrangements to deliver the television to the Tenant as soon as possible. Should the Landlord fail to deliver the television to the Tenant, the Tenant has leave to reapply for compensation for this item.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$350.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 23, 2018

Residential Tenancy Branch