



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP MNDC MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on December 14, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlords return the Tenant's personal property;
- a monetary order for money owed or compensation for damage or loss; and
- an order that the Landlord return all or part of the security deposit and pet damage deposit.

The Tenant and the Landlords attended the telephone conference hearing at the appointed date and time. All parties provided affirmed testimony.

The Tenant testified the Application package was served on the Landlords by registered mail. The Landlords acknowledged receipt. The Landlords submitted documentary evidence in response to the Application. According to the Landlords, it was served on the Tenant at the address provided on the Application. The Tenant acknowledged receipt. No further issues with respect to service or receipt of these documents were raised during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlords return the Tenant's personal property?
2. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties agreed the tenancy began on or about August 24, 2017, and ended when the Tenant vacated the rental unit on or about December 3, 2017. During the tenancy, rent in the amount of \$1,000.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$500.00, which the Landlords hold.

First, the Tenant sought an order that the Landlords return her personal property. She testified that a number of personal items like documents and clothing were left behind.

In reply, the Landlords acknowledged the Tenant's belongings were left behind. D.N. stated they were put in bags and that the Landlords have made numerous attempts to contact the Tenant to pick them up. D.N. confirmed the Tenant's belongings can be collected at any time.

Second, the Tenant claimed \$2,000.00 for the Landlords' "failure to give [the Tenant] proper notice, as [the Tenant] was assaulted and kicked out with no notice of eviction or anything." The Tenant testified that a disagreement arose with D.N. over the Tenant's treatment of her dog. The Tenant testified that she was assaulted by D.N. during an incident on November 5, 2017. For the remainder of the month, the Tenant was in and out of the rental unit. However, the Tenant testified she was advised to continue to pay rent. She testified she returned to the rental unit to pay rent on December 1, 2017, but had been locked out of the suite. She returned with a police officer two days later to collect some of her belongings and has not returned.

In reply, D.N. denied assaulting the Tenant and locking the Tenant out of the rental unit. She stated the Tenant has made a number of false claims to police and has been advised by police to stop doing so.

Third, the Tenant claimed \$1,000.00, representing double the amount of the security deposit, because she “was kicked out with no notice and [the Tenant’s] damage deposit was not returned”. The Tenant testified that her forwarding address was provided to the Landlord with the Application.

The Landlord advised that the only address received from the Tenant was with the Application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

With respect to the Tenant’s request for an order that the Landlord return her personal property, section 65(1) of the *Act* empowers the director to order that personal property seized or received by a landlord contrary to this *Act* or a tenancy agreement must be returned. During the hearing, the Landlords acknowledged that some of the Tenant’s belongings are still at the rental property and are available for pick-up. I order the Landlords to make the Tenant’s belongings available for pick-up by the Tenant. Pick-up of the Tenant’s belongings is to take place at a mutually agreed date and time.

The Tenant also requested monetary compensation. Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. 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 what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenant's request for a monetary order for \$2,000.00, I find there is insufficient evidence to conclude the Tenant is entitled to the relief sought. Although the Tenant testified she was locked out of the rental unit without notice, the Landlords denied doing so. There was no corroborating documentary evidence submitted by the Tenant. Therefore, I find there is insufficient evidence that the Landlord violated the *Act* as alleged. Indeed, the only documentary evidence submitted with the Application was a photograph of the Tenant's forearm, a police officer's business card, and a note from the Tenant's physician. This aspect of the Application is dismissed.

With respect to the Tenant's request for \$1,000.00, which is double the amount of the security deposit held by the Landlord, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. In this case, I find that the Tenant has not provided the Landlords with her forwarding address as contemplated under section 38(1) of the *Act*. However, during the hearing, the Tenant confirmed the address provided on the Application can be used for this purpose. I find it appropriate in the circumstances to order that the Landlords are deemed to have received the Tenant's forwarding address in writing on June 7, 2018, the date of this Decision. The Landlords are therefore ordered to deal with the security deposit held in accordance with section 38(1) of the *Act*. That is, in the absence of an agreement between the parties, the Landlords must either return the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution no later than June 22, 2018. Failure to do so may result in the Tenant, on application, receiving a monetary award for double the amount of the security deposit.

In this case, the Tenant submitted insufficient evidence in support of her claim. Although orders were made, they were in response to the Landlords' agreement in one case, and to give effect to section 38(1) of the *Act* in the other. Accordingly, I decline to grant recovery of the filing fee paid to the Tenant.

Conclusion

I order the Landlords to make the Tenant's belongings available for pick-up by the Tenant. Pick-up of the Tenant's belongings should take place at a mutually agreed date and time.

The Landlords are deemed to have received the Tenant's forwarding address in writing on the date of this Decision. The Landlords are therefore ordered to deal with the security deposit held in accordance with section 38(1) of the *Act*.

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: June 8, 2018

Residential Tenancy Branch