



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RPP MNDC MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 10, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord 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/or pet damage deposit.

The Tenant attended the hearing and was accompanied by B.M., an advocate. The Landlord was represented at the hearing by R.P., an agent. The Tenant and R.P. provided affirmed testimony.

The Tenant testified the Application package was served on the Landlord at the head office. R.P. acknowledged receipt on behalf of the Landlord. In addition, the parties agreed the Tenant's documentary evidence was received by the Landlord on October 22, 2018. Although not served in accordance with the Rules of Procedure, R.P. confirmed she had an opportunity to review and consider the Tenant's documentary evidence. No issues were raised during the hearing with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Landlord did not submit documentary evidence in response to the Application.

The parties were given a full 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 Landlord 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 and/or pet damage deposit?

Background and Evidence

The parties agreed the tenancy began on or about October 3, 2017, and ended on September 3, 2018. During the tenancy, rent was due in the amount of \$375.00 per month. The Tenant paid a security deposit of \$187.50, which the Landlord holds.

The Tenant sought an order that the Landlord return his personal property and a monetary order for \$34,687.00 to replace items that have not been returned to him.

The Tenant's Application states the Landlord's agents "stole and disposed of all [his] property...on 21 separate occasions over the past 18 months." The Tenant testified that during the tenancy his belongings were occasionally left in the hallway while he addressed a rat problem in his rental unit. A list of items including an amplifier, a new television, a vacuum cleaner, clothing, a puppet, bedding, CDs and DVDs, kitchen appliances, tattoo gear, digital cameras, gold rings, runners and tools was submitted by the Tenant. The estimated value of each item was provided.

The Tenant testified that his belongings were removed from the hallway by the cleaner and were not returned to him. The Tenant stated that even when he asked to have his belongings returned, the Landlord refused to do so. B.M. added that the Tenant expressed concerns about his belongings to him on several occasions.

In reply, R.P. testified the Tenant left his belongings in the hallway on almost a daily basis, contrary to signs left in the hallways. According to R.P., this represented a hazard and the Tenant's belongings were removed to storage. R.P. testified the Tenant's belongings were returned to him on request, and that the Landlord no longer has the Tenant's belongings in storage.

In addition, the Tenant sought to recover the \$187.50 security deposit. He testified he did not provide the Landlord with a forwarding address because he is now homeless. However, during the hearing, B.M. confirmed the address provided with the Application could be used as the Tenant's forwarding address.

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 his 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, R.P. acknowledged that some of the Tenant's belongings were removed from the hallway but were subsequently returned to him upon request. In light of the contradictory statements made by the Tenant and R.P., I find there is insufficient evidence before me to conclude the Tenant is entitled to an order that personal property be returned. This aspect of the Application is dismissed.

With respect to the Tenant's request for a monetary order for \$34,687.00, 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.

After careful consideration of the evidence and submissions of the parties, I find there is insufficient evidence before me of the value of the Tenant's belongings. All that was provided in support were a list of items and an estimated value for each. I note the estimated values appeared in some examples to be inflated, although I make no finding in that regard. Further, there was no additional documentation submitted in support of the value of the items.

In addition, I find the Tenant did not do what was reasonable to minimize his losses, if any. The tenancy continued for 11 months. However, it was not until after the tenancy ended that the Tenant submitted the Application. This aspect of the Application is dismissed.

With respect to the Tenant's request for the return of the security deposit, 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, the Tenant acknowledged he has not yet provided the Landlord with his forwarding address in writing. However, I find that the Landlord is deemed to have received the Tenant's forwarding address in writing on the date of this decision, October 26, 2018. For the purpose of this aspect of the Tenant's claim only, I order the Landlord to deal with the security deposit held in accordance with section 38 of the *Act*. That is, in the absence of an agreement between the parties, the Landlord must either return the security deposit to the Tenant or make a claim against it by filing an application for dispute resolution. Failure to do so may result in the Tenant, on application, receiving a monetary award for double the amount of the security deposit.

Conclusion

The Landlord is deemed to have received the Tenant's forwarding address in writing on October 26, 2018. Therefore, the Landlord is ordered to deal with the security deposit held in accordance with section 38 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: October 26, 2018

Residential Tenancy Branch