



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant claims that she served the landlord with the notice of hearing package in person on July 26, 2018. The tenant stated that the landlord was served with the submitted documentary evidence on September 14, 2018 by placing it in the landlord's mailbox. The landlord confirmed receipt of the tenant's documentary evidence, except for the monetary worksheet dated July 9, 2018. The tenant also submitted late photographic evidence via courier 4 days prior to the scheduled hearing date. The landlord disputed receiving the late photographic evidence. The tenant was unable to provide any supporting evidence confirming service of the monetary worksheet and the late submission of photographs. The landlord stated that the tenant was served with his documentary evidence by placing it in the landlord's mailbox on September 8, 2018. The tenant disputed that no documentary evidence was received. I accept the undisputed affirmed evidence of both parties that the notice of hearing package was sufficiently served in person on July 26, 2018. I also accept the undisputed affirmed evidence that the landlord was served with the tenant's documentary evidence except for the monetary worksheet and the late submission of photographs. I find that the landlord has failed to provide sufficient evidence of service of the landlord's submitted documentary evidence by placing it in the landlord's own mailbox on September 8, 2018 as service to the tenant and as such is excluded from consideration in this hearing.

Preliminary Issue

At the outset it was clarified with the tenant regarding the request for return of personal property that the tenant has failed to provide a proper detailed listing of the items sought. In any event the landlord has indicated that he does not hold any tenant items and cannot return what he does not have. As such, the tenant's request for return of personal property is dismissed. The hearing shall proceed on the tenant's monetary claim only.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy ended on June 2, 2018 as a result of an order of possession granted to the landlord.

The tenant seeks a monetary claim of \$35,000.00 which consists of:

\$16,000.00	Loss of Wages (Feb 2017-May 2018, 16 months @ \$1,000.00 per month)
\$15,000.00	Towels, Linen, toiletries(\$400.00), bedding(\$400.00), medical(catheters \$700.00)
\$4,000.00	Vintage Motorcycle parts
\$2,000.00	Vintage Car parts
\$1,500.00	Vintage Tools
\$600.00	Household items and cleaning supplies (3 vacuums, cleaning tools and supplies)
\$1,600.00	DVD's (5 boxes @ \$160.00 each)
\$690.00	Futon Bed, Pet Bed, 2 mountain bikes, 2 book display cases
\$1,800.00	Lawn Bowling, Table, shoes, shaw digital box/pvr
\$6,000.00	Health of my 2 pets

It was clarified that the tenant's monetary claim although listed as \$35,000.00 exceeds that total to \$49,190.00 based upon a calculation of the provided totals. The tenant's monetary claim is limited to the limit of \$35,000.00.

The tenant claims that on June 2, 2018 the tenant vacated the rental unit, but was unable to remove all of her personal belongings. The tenant stated that the landlord had removed all of the tenant's belongings on June 2, 2018 (for which the tenant was partially present) and placed the items in the driveway. The tenant left to work and returned later to discover all of the items gone.

The tenant stated that the tenant suffered a loss of wages over a 16 month period from February 2017 to May 2018 due to the condition of the rental premises.

The tenant stated that a house water test was made 3 times in which she determined that the water was contaminated which caused her illness. As a result the tenant suffered a loss of wages. The tenant also seeks compensation for the loss of items left behind at the end of the tenancy.

The landlord argued that an order of possession was served and that the tenant was evicted on June 2, 2018 with the assistance of bailiffs executing a writ of possession. The tenant was present at this time that the tenant's possessions were removed and placed in the driveway. The landlord argued that the tenant chose to go to work instead of dealing with the removed items left on the driveway and should not be responsible as such. The landlord confirmed in his direct testimony that the tenant reported a water issue, but that it was investigated and no health issues could be determined that would affect the tenancy. The landlord also stated that none of the other rental unit tenants have reported any water issues or health concerns.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, both parties confirmed that the tenancy ended as a result of a writ of possession being executed by bailiffs on June 2, 2018. The tenant was present during this process when the tenant's personal belongings were being removed as placed in the driveway outside. Both parties also confirmed that the tenant chose to leave to go to work instead of securing the tenant's personal property. The tenant has not provided any specific details of an actual amount for each of the items sought for compensation.

The tenant also seeks compensation for the loss of wages of \$16,000.00 for the period of time between Feb 2017 and May 2018, for 16 months @ \$1,000.00 per month and \$6,000.00 for the health of her 2 pets. The tenant has not provided any specific details of actual loss of wages or of an actual amount for this claim of loss of wages. The tenant did not provide any specific details on the compensation sought for her 2 pets' health as well. Although the landlord confirmed in his direct testimony that there were water issues, he disputes that an investigation did take place in which it was determined that the water issues did not affect the tenancy in any way.

I find on a balance of probabilities that the tenant has failed to provide sufficient evidence to prove her claim and as such, the tenant's monetary claim is dismissed. Both parties provided conflicting testimony regarding the water issues and I find that as the tenant has made this claim, the onus is on the tenant. I also find that the tenant must bear the responsibility of her personal property as she was present or partially present during the eviction process and should have taken steps to secure her property as they were placed in the driveway a public place.

Conclusion

The tenant's application is dismissed without leave to reapply.

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 9, 2018

Residential Tenancy Branch