



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HABITAT HOUSING SOCIETY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RPP, FTT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation, for an Order for the Landlord to return the Tenant’s personal property and for the recovery of the filing fee paid for this application.

The initial hearing was scheduled for November 23, 2018 and was adjourned for the Tenant to submit a Monetary Order Worksheet with details of her monetary claim and to serve all evidence to the Landlord. The reconvened hearing was scheduled to be heard on January 11, 2019. This decision should be read in conjunction with the interim decision dated November 23, 2018.

The Tenant and two agents for the Landlord (the “Landlord”) were present for both teleconference hearings. The Tenant submitted 5 pages of a Monetary Order Worksheet and the Landlord confirmed receipt of a copy of this worksheet along with the remainder of the Tenant’s evidence. The Landlord submitted additional photo evidence following the initial hearing but clarified that this was higher resolution photos that were previously submitted. The Tenant confirmed receipt of these photos. Therefore, I find that both parties were duly served with a copy of each party’s evidence in accordance with the *Residential Tenancy Branch Rules of Procedure* and the evidence of both parties will be considered in this decision.

The parties were affirmed at the initial hearing and confirmed at the reconvened hearing that they understood the importance of telling the truth. The parties were provided with the opportunity to present evidence, make submissions and question the other party.

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

Is the Tenant entitled to monetary compensation?

Should the Landlord be ordered to return the Tenant's personal property?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy began on October 1, 2015. Monthly rent was \$328.00, and no security deposit was required. The tenancy agreement was submitted into evidence and confirms the start date of the tenancy.

The parties were not in agreement as to when the tenancy ended. The Landlord stated that the tenancy ended on July 31, 2018 and the Tenant stated that the tenancy ended on July 9, 2018 after which time she was not allowed access to the rental unit.

The Tenant has applied for the return of her personal property as well as monetary compensation in the amount of \$35,000.00. She clarified that the compensation requested is for the value of the items and she is only seeking monetary compensation should it not be possible to return her belongings.

The Tenant testified that in July 2018 she advised the Landlord that she would like to move but did not confirm a date or put anything into writing. However, she started to make notes to write a letter to the Landlord and left these notes in her rental unit. She went away in early July 2018 and returned to the rental property on July 9, 2018. The Tenant testified that when she returned to the residential property, she found that she was locked out of the rental unit and she did not have access to her belonging inside the rental unit.

The Tenant provided further testimony that on July 10, 2018 she was advised by a friend that some of her belongings were up for sale on the residential property. On July 18, 2018 the Tenant spoke to the Landlord and was advised that they found her draft letter to end the tenancy. The Tenant stated that she had not confirmed that the tenancy would be ending and had not provided a date. She stated that her intention was to provide them with notice to end the tenancy in September 2018.

The Tenant stated that she had received a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on or around July 5, 2018. She stated that after receiving this notice she paid rent for July 2018 right away, thus cancelling the 10 Day Notice. The Tenant submitted a receipt into evidence stating that on July 6, 2018 she paid \$330.00 in rent, of which \$2.00 was put towards August 2018 rent.

The Landlord submitted the 10 Day Notice into evidence. The notice, dated July 6, 2018 states that \$328.00 was unpaid as due on July 1, 2018.

Five pages of Monetary Order Worksheets were submitted outlining the estimated costs of the items in the rental unit. The Tenant stated that she went to stores to gather information on the cost of the items. The compensation claimed as outlined on the Monetary Order Worksheets totals \$35,034.00 and includes furniture, electronics including 3 televisions, kitchen items, paintings, lamps, as well as many other household items.

The Tenant has also claimed for compensation for a hospital stay in the amount of \$500.00 and compensation for the purchase of new clothing and shoes in the amount of \$15,000.00. The Tenant submitted a few photos of her rental unit to show the items that she owned. The Tenant also submitted two letters both dated November 5, 2018 from family members who state that they were aware of the items in the Tenant's rental unit. The Tenant also submitted a written statement outlining the events that occurred in July 2018.

The Landlord testified that rent was not paid for July 2018 as due on the first day of the month. As such, they served the Tenant with a 10 Day Notice, which was cancelled on July 6, 2018 when rent was paid for July 2018. The Landlord stated that they also received a letter from the Tenant that ended the tenancy at the end of July 2018. They stated that this notice was not found in the Tenant's apartment but was placed in their mailbox.

The Landlord submitted the Tenant's notice to end tenancy into evidence. The notice was provided on a 'Service Request Form' with the Landlord's letterhead. The notice is signed by the Tenant and dated July 2018, with no specific date in July noted. The notice does not state the date the tenancy will be ending and instead states the following:

Vacating premises even though my rent is paid. No longer at this address.

The Landlord stated that based on this letter and payment of July 2018 rent, the tenancy was set to end on July 31, 2018. The Landlord stated that the Tenant moved out of the rental unit earlier in July 2018, but they waited until the end of July 2018 to enter her rental unit. It was at this time that the Landlord became aware that the Tenant had left many belongings behind. They stated that they saw bedding, a mattress, wood furniture, plants and clothing but no electronics or anything of significant value.

The Landlord stated that as they did not have contact information for the Tenant they confirmed with a support worker that she had moved out. As it was determined that the belongings left in the rental unit were valued at less than \$500.00, the Landlord called a junk removal company and the items were removed from the home. The Landlord submitted photos of the rental unit at the time they entered at the end of July 2018 which show the items left behind.

The Landlord stated that it seemed that the Tenant had moved some of her belonging out, such as televisions, but that the items that remained seemed "ransacked". The Landlord submitted that the photos were taken on or around July 28, 2018 when they entered for a pre-moveout inspection. They stated that they entered the rental unit again on July 31, 2018 for the final inspection after it had been confirmed with the Tenant's support worker that she had moved out.

The Landlord also stated that it was at the end of July 2018 when a water flooding issue occurred on the residential property. However, they stated that had the Tenant still been residing in the rental unit she would have been provided with a hotel. They noted that the rental unit needed to be clean and vacant for August 1, 2018 when a new resident was moving in due to the Tenant's notice to vacate at the end of July 2018.

The Landlord stated that they contact tenants to arrange move-out inspections but that they had no forwarding address for the Tenant and no way to communicate with her

other than through a support worker. The Landlord stated that the Tenant did not return the keys.

The Tenant stated that on July 18, 2018 she spoke to an agent for the Landlord to figure out why she was locked out of the rental unit. She stated that the agent told her that she had advised them that she was moving. The Tenant thought the confusion may have been regarding the 10 Day Notice so advised them that the notice had been cancelled when she paid the rent. She stated that the 10 Day Notice was ripped up in front of her at the time she paid the outstanding rent.

The Tenant testified that she talked to her support worker when at the building on July 18, 2018 and told him that she wanted to stay until July 31, 2018. The Tenant stated that no items were moved from her apartment in July 31, 2018 and therefore all of her belongings were still in the rental unit at the time she was no longer allowed access. The Tenant further testified that she had some empty boxes in the rental unit as she had started packing with the intention to move out for September 1, 2018. She also stated that she was not contacted regarding a move-out inspection.

Analysis

Based on the testimony and evidence of both parties, I find as follows:

The Landlord stated that they hired a junk removal company to remove the Tenant's belongings that she left behind. Therefore, I find that I am not able to order the Landlord to return the Tenant's belongings and instead will consider whether the Tenant is entitled to compensation for the loss of these belongings.

In determining whether the Tenant is entitled to compensation for her belongings, I find it relevant to determine whether the tenancy had ended when the items were removed and whether the Tenant abandoned the rental unit.

The notice to end tenancy was included in the Landlord's evidence and the Landlord stated that the tenancy was set to end on July 31, 2018. However, Section 52 of the Act states that in order to be effective, a notice to end tenancy must be signed and dated, include the rental address, and state the effective date of the notice. While the notice was signed by the Tenant and included the rental unit, it was dated July 2018 with no specific date provided and did not provide an effective end of tenancy date.

The Landlord did not provide any evidence as to when this notice was received other than stating that it was provided in their mailbox. The Tenant stated that this notice was never provided to the Landlord and instead was found inside of her apartment.

However, regardless of how the Landlord obtained this notice, I find that both parties have a responsibility to know their rights and duties under the *Act*, including the proper process for ending a tenancy. Therefore, I find that the Landlord should not have accepted this as a notice to end the tenancy and not assumed that the tenancy would end on July 31, 2018 as this was not stated in the notice.

I also note that had this letter been provided in July 2018, it would have ended the tenancy at the end of August 2018, in accordance with Section 45(1) of the *Act*. As such, I do not find that this was an effective notice to end the tenancy on July 31, 2018 and should not have been accepted by the Landlord as such.

I also find that the tenancy did not end through the 10 Day Notice as both parties agreed that the rent was paid on July 6, 2018, the same day of the 10 Day Notice. As stated in Section 46(4)(a) of the *Act*, if the rent owing is paid within 5 days of receipt of the 10 Day Notice, the notice is cancelled.

As the Landlord removed the Tenant's belongings as though the Tenant had abandoned the rental unit, I refer to Section 24 of the *Residential Tenancy Regulation* which states the following:

- 24 (1) A landlord may consider that a tenant has abandoned personal property if
- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
 - (b) subject to subsection (2), the tenant leaves the personal property on residential property
 - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
 - (ii) from which the tenant has removed substantially all of his or her personal property.

As stated above, I do not find that the tenancy had been ended in accordance with the *Act*. I also do not find evidence before me that the Tenant did not occupy the rental unit for a period of one month and that rent was not paid.

The parties agreed that the Tenant paid the rent for July 2018 on July 6, 2018. I also do not find evidence that the Tenant had removed the majority of her personal property. The photos submitted by the Landlord show a significant amount of household items and personal belongings left behind, which makes it likely that these items were not garbage or junk left behind by the Tenant after she moved out. Accordingly, I do not find that the Landlord had cause to find the rental unit abandoned.

Section 25(1) of the *Regulation* states that personal property valued at more than \$500.00 must be stored for 60 days, although Section 25(2) states that property valued at less than \$500.00 may be disposed of. The Landlord stated the value of the belongings at less than \$500.00 and had them disposed of. Although I find that the Tenant did not abandon the rental unit, and therefore the belongings should not have been removed from the rental unit, I also find evidence from the photos that the belongings are likely to be worth more than \$500.00.

Although it was not entirely clear whether the junk removal company removed the Tenant's belongings on July 28 or July 31, 2018, either way I find that the belongings were removed prior to the Tenant moving out and without proper notice that she would be moving out. As such, I find that the Landlord did not have reason under the *Act* to dispose of the Tenant's belongings and therefore were not in compliance with the *Act* and *Regulation* when they did so.

Section 7(1) of the *Act* states the following:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

However, *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* provides further clarification and states that the party claiming a loss must prove the value of their loss. The Tenant submitted a few photos to show some of the belongings she owned and also submitted two letters from family members stating their agreement as to the items in the rental unit. However, the Tenant's Monetary Order Worksheets include an estimate as to the value of the items with no further evidence as to how the

value of the items was calculated or that would provide further clarification in determining the value of the Tenant's belongings.

The photos submitted by the Landlord that they stated were taken on July 28, 2018 show the condition of the rental unit prior to the items being removed. The photos show furniture, plants, wall decorations, a mattress, and despite the Landlord stating there were no electronics left behind, the photos show a flat-screen television. Although the Tenant has claimed for items such as three televisions, an iPad, two cameras and other electronics and household items, I am not satisfied that the Tenant has established the value of these items and I do not have sufficient evidence before me to be satisfied that these items were in the rental unit. As the Tenant has established her claim that her belongings were disposed of without her permission, I find that she is entitled to some compensation for these belongings.

The Tenant also claimed compensation for non-material items including \$500.00 for three hospital stays and \$450.00 for rent at a new unit. However, I do not find sufficient evidence before to establish that these costs resulted from the Landlord's breach of the *Act* and that the Tenant is entitled to compensation.

As stated, I find that the Tenant did not establish the value of her monetary claim. However, I find it reasonable that the Tenant would have had some commonly used household items in the rental unit and therefore, pursuant to Section 67 of the *Act* find that she is owed an estimated minimum amount for the replacement of these items. As stated in *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss*, a party may be awarded nominal damages in situations where establishing the value of the loss may not be straightforward, but it has been determined that there was a breach of the *Act*.

As the Tenant was partially successful in her application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Tenant is awarded a Monetary Order in the amount outlined below:

Kitchen items	\$300.00
Bathroom supplies	\$100.00
Clothing	\$250.00
Television	\$300.00
Furniture	\$500.00
Mattress	\$150.00
Filing fee	\$100.00
Total owing to Tenant	\$1,700.00

Conclusion

The Tenant's application for the return of personal property is dismissed, without leave to reapply.

Pursuant to Section 67 of the *Act*, I grant the Tenant a **Monetary Order** for compensation in the amount of **\$1,700.00**, which includes the recovery of the filing fee. The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: January 31, 2019

Residential Tenancy Branch