



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, RPP, FFT

Introduction

On June 12, 2019, the Tenants applied for a Dispute Resolution proceeding seeking a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking a return of personal property pursuant to Section 65 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant C.H. attended the hearing ten minutes late, citing that she was not aware that it was her responsibility to call into the hearing. Both the Landlords attended the hearing at the scheduled start time. All in attendance provided a solemn affirmation.

The Tenant advised that she served a Notice of Hearing package to each Landlord by registered mail on July 16, 2019 and the Landlords confirmed that they received these documents. The Tenant stated that the reason she did not serve these documents within three days of receiving them, pursuant to Rule 3.1. of the Rules of Procedure, was because she was “incredibly busy” and that she used her personal email address instead of her business email address and she does not check her personal email address often. It is not clear to me why the Tenant would use an email address that she apparently does not check frequently as a means to receive documents for this Application. From the outset of the hearing, the dubious nature of the Tenant’s responses caused me to question the reliability of those responses. Regardless, despite receiving the Notice of Hearing packages late, the Landlords elected to proceed with the hearing.

The Tenant advised that she served her evidence to the Landlords by having her ex-boyfriend hand deliver it on August 7, 2019. However, she did not know where he attempted to serve these documents, who he served them to, if at all, or what he did with them. The reason she attempted to serve this evidence so late is because she “did not read” or “pay attention” to the instructions given to her in the Notice of Hearing package. I find that these responses, in conjunction with the Tenant’s responses to service of the Notice of Hearing package, demonstrated a consistent pattern of behaviour, actions, or comments that cause me to further detract from the reliability of her submissions. As this evidence was served late and not in accordance with the

timeframe requirements of Rule 3.14 of the Rules of Procedure, I have excluded the Tenants' evidence and will not consider it when rendering this decision.

The Landlords advised that they did not submit any evidence to this file for consideration.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to monetary compensation?
- Are the Tenants entitled to a return of their personal property?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the Tenant rented a self-contained "basement suite" where she had her own kitchen and bathroom. The tenancy started on November 7, 2018 and ended when the Tenants vacated the rental unit. The Landlords advised that on May 3, 2019, the Tenant screamed at them and stated that they were leaving the rental unit. The Landlords stated that the Tenant's mother-in-law came over to the property the next day and, on behalf of the Tenant, verbally advised that the Tenants will be ending their tenancy. The Landlords stated that the Tenant returned to the rental unit with movers to collect their property on May 10, 2019, and they did not return after this date.

The Tenant advised that the last day they spent at the rental unit was May 3, 2019 and she confirmed that they moved their belonging out of the rental unit and gave up vacant possession on May 10, 2019.

The Landlords advised that rent was established at \$1,200.00 per month, due on the first day of each month; however, the Tenant contradictorily stated that rent was \$1,000.00 per month. Both parties agreed that a \$600.00 security deposit "rolled over" from a previous tenancy between the parties at a different property.

The Tenant advised that she provided her forwarding address in writing to the Landlords by text message on May 28, 2019. The Landlords acknowledge that they received this text message; however, it is their position that this is not a forwarding address in writing as permitted by the *Act*.

The Tenant advised that due to being unlawfully evicted by the Landlords, they are seeking compensation in the amount of **\$4,000.00** for accommodations in May and June 2019 that she spent on another rental unit, **\$188.18** for moving supplies, **\$205.00** for a storage unit, **\$62.00** for a PO Box rental, **\$54.60** for mail forwarding, and **\$420.00** for a moving company.

She stated that she paid \$1,200.00 for May 2019 rent on May 9, 2019 but was then subsequently locked out of the rental unit by the Landlords. However, she then stated she was locked out on May 6, 2019. She advised that she was locked out due to a disagreement with the Landlords over \$200.00 extra that they were asking for rent and extra utilities. When she was questioned why the Landlords would lock her out of the rental unit if she had paid the rent in full of \$1,200.00 or, according to her testimony, why they would lock her out three days before she testified to paying the rent, the Tenant then changed her testimony to say that she paid the rent on May 4, 2019.

The Landlords advised that even though the Tenant rented a separate rental unit, the relationship between the parties was more akin to a family relationship. They stated that they never evicted her, nor did they change the locks to the rental unit. They submitted that the Tenant had her own separate entrance to the rental unit and her own keys; however, the Tenant attempted to use other doors on the property to access her rental unit, which were locked.

The Tenant advised that there are three separate entryways to the rental unit and that the door specifically for the rental unit did not lock or latch. However, she then stated that this door was latched by the Landlords from the inside, effectively locking her out of the rental unit.

The Landlords refuted this and reiterated that the door specifically for the rental unit has its own lock and the Tenant has keys to this door. As well, they stated that the Tenant contradicted her own testimony by stating that this door was allegedly latched, as she had previously stated that the door never locks or latches.

In the Tenant's Application, she submitted that she was also seeking compensation in the amount of **\$1,000.00** due to an issue with a yurt that she claimed she purchased from the Landlords. However, the price that she claimed to have purchased it for was \$6,000.00. The Tenant was seeking an Order for the yurt to be returned. While she claimed that she owned the yurt and wanted its return, she stated that she "did not know what she was doing" on the Application and attributed this \$1,000.00 claim for a rent issue.

The Landlords' position is that the yurt was their property and it was never sold to the Tenant.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

While the Tenant advised that a forwarding address was provided via email on May 28, 2019, I am not satisfied that this constitutes "in writing" as per the *Act*. As such, I do not find that the Tenants have complied with the *Act*, that a forwarding address was never provided pursuant to the *Act*, and therefore, the doubling provisions do not apply. Consequently, I dismiss this portion of the Tenants' claim as she applied prematurely.

With respect to the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

When reviewing the evidence and testimony before me, from the outset of the hearing, the Tenant provided responses that demonstrated ambivalence and/or uncertainty, which caused me to question the reliability of her submissions. When she subsequently made submissions relevant to her claims pertaining to the alleged unlawful eviction, she provided testimony which contradicted her prior testimony. I find that this detracts from the amount of weight I can place on the legitimacy or truthfulness of her submissions. Furthermore, with respect to how she was locked out of her rental unit, she stated that the door that provides direct access to her suite did not lock or latch; however, she then alleged that the Landlords latched this door, preventing her access. I find this direct contradiction causes me to doubt further the reliability of her testimony. Moreover, I find it dubious that the Tenant would rent a rental unit where the main door providing access to it would not have a locking mechanism to safeguard it, as she submitted. I also

question why the Tenant would have keys to a rental unit that had a door with no ability to be locked.

I find that the combination of these doubts, in conjunction with the Tenant's varying and questionable testimony, cause me to place no weight on the reliability or credibility of the Tenant's submissions. As a result, I am not satisfied that the Tenant was unlawfully evicted as she alleges. Furthermore, she has not provided any documentary evidence to support this alleged unlawful eviction, nor has she provided any documentary evidence to support any monetary losses she suffered. Therefore, I dismiss her claims with respect to the alleged unlawful eviction in their entirety.

With respect to her request for the return of her personal property, the Tenant has not provided any documentary evidence that she owned the property that she sought a remedy on or that the Landlords had seized this from her. As a result, I dismiss this claim in its entirety as well.

Finally, with respect to the \$1,000.00 claim for compensation, I find it important to note that Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute. During the hearing, the Tenant was asked if she had submitted a Monetary Order Worksheet or any document that would specifically outline her request for this monetary compensation totaling the \$1,000.00 that she was seeking. However, she did not submit such a document to the Landlords, nor to the Residential Tenancy Branch. As well she indicated that she she "did not know what she was doing" on the Application and this \$1,000.00 claim pertained to a rent issue.

I do not find that the Tenant has made it abundantly clear to any party that she is certain of what the exact amounts she believes is owed by Landlords or for what breaches of the *Act*. As I am not satisfied that the Tenants outlined their claim precisely, with clarity, I do not find that the Tenants have adequately established a claim for a Monetary Order pursuant to Section 59(2) of the *Act*. As it would be prejudicial to the Landlords to proceed with this claim without knowing the case specifically against them, Section 59(5) allows for an Application submitted in this manner to be dismissed because the full particulars are not outlined. For these reasons, I dismiss this portion of the Tenants' Application without leave to reapply.

As the Tenants were not successful in their claims, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Based on my findings above, I dismiss the Tenants' Application with respect to the return of double the security deposit with leave to reapply if the Tenants provide a

forwarding address in writing and the Landlords do not deal with the deposit pursuant to the *Act*.

As well, based on my findings above, I dismiss the Tenants' Application with respect to the remainder of their claims in this Application 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: August 12, 2019

Residential Tenancy Branch