



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of personal property - Section 65;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on July 26, 2019 in accordance with Section 89 of the Act. Postal evidence of the mail was provided indicating that the Landlord refused the mail. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Materials on July 31, 2019 regardless of not collecting the mail. The Tenant was given full opportunity to be heard, to present evidence and to make submissions. The Tenant confirms that the Landlord’s email as set out in the application is correct.

Issue(s) to be Decided

Is the Tenant entitled to return of personal property?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy without written agreement started on June 1, 2019. Rent of \$1,000.00 was payable on the first day of each month. No security deposit was collected. On July 16, 2019 the Landlord attended the rental unit in an aggressive manner and an altercation occurred. The Tenant called the police and later left the unit to stay at another location. The Tenant returned to the unit on July 17, 2019 to find that the Landlord had changed the locks to the unit. The Landlord had no order of possession for the unit. The Tenant had paid the full rent for July 2019 and claims \$1,000.00 for return of rent and for the inconvenience of being locked out. The Tenant was operating an Airbnb at a different location and after being locked out of the unit they stayed at this residence resulting in a loss of income from that residence. The Tenant has not provided any supporting documentation of costs or losses claimed.

The Tenant states that as a result of being locked out of the unit the Tenant was unable to remove its personal belongings. On July 17, 2019 the Tenant sent the Landlord an email requesting access to retrieve its belongings. The Landlord replied however nothing in the reply addressed the personal property or any agreement to allow access to the unit to retrieve the property. The Tenant witnessed the Landlord removed its property from the unit to a truck. The Tenant provides a list of property seized by the Landlord and claims an order for its return.

Analysis

Section 65(1)(e) of the Act provides that if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned. Section 31(1) of the Act provides that a landlord

must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property. Based on the undisputed evidence that the Landlord changed the locks, refused access to the unit to the Tenant while the tenancy was ongoing and refused to allow the Tenant to collect its belongings, I find that the Tenant has substantiated that the Landlord breach the Act. Based on the undisputed evidence that the Landlord seized the Tenant's property as listed by the Tenant and that this property has not been returned I find that the Tenant is entitled to an order that the Landlord return the Tenant's property listed by the Tenant as follows:

- 1.TV
- 2.DVD
- 3.Mattress
- 4.Bed Frame
- 5.Dresser
- 6.Couch
- 7.Rugs
- 8.Art
- 9.Pictures
- 10.Mirrors
- 11.Side Tables x 2
- 12.Dining Table and chairs
- 13.Curtains and Rods
- 14.Lounge Chair
- 15.Duvet
- 16.Linens/Pillows
- 17.Small appliances: Coffee maker, toaster, blender, microwave, hand blender
- 18.House plants
- 19.Coffee table
- 20.Plates, Utensils, Cutlery, Dishes, Glasses, tea pot, kettle, pots, pans

21. Shelves – 2 units

22. Personal Items- Hygiene items, 45 dvds, pictures, books, food

I order the Landlord return this above listed property to the Tenant at the Landlord's expense no later than 10 days after receipt of this Decision. If the Landlord fails to act as ordered I grant the Tenant leave to reapply for compensation for the loss of its personal property.

Section 28(c) of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*]. Section 26(3) of the Act provides that a landlord must not seize any personal property of the tenant or prevent or interfere with the tenant's access to the tenant's personal property. Based on the undisputed evidence that the Landlord changed the locks and did not allow the Tenant access to or possession of the unit while the tenancy was ongoing, I find that the Landlord breached the Tenant's right to exclusive possession of the unit.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Based on the undisputed evidence that the Tenant paid full rent for July 2019 and as the Tenant was refused use and exclusive occupation of the unit on July 17, 2019, I find that the Tenant has substantiated a return of the rent paid for the period July 17 to 31, 2019 of **\$516.16**. This amount is calculated based on a per-diem of \$32.26 for 16 days. As the Tenant has not provided any supporting evidence of costs incurred or further losses experienced as a result of being locked out of the unit but accepting that the Tenant suffered significant inconvenience, I find that the Tenant is entitled to **\$200.00** for the Landlord's breach of the Act.

As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$816.16**.

Conclusion

I order the Landlord to return the Tenant's personal property at the Landlord's expense no later than 10 days after receipt of this Decision.

I grant the Tenant an order under Section 67 of the Act for **\$816.16**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: September 27, 2019

Residential Tenancy Branch