



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, MNDC, MNSD

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, a return of her security deposit, and for an order requiring the landlord to return her personal property.

The tenant and the landlord's legal counsel appeared, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters-

The tenant listed an incorrect surname for the respondent/landlord in her application for dispute resolution, as shown by her documentary evidence as well as the landlord's legal counsel's submissions.

I find it appropriate to amend the tenant's application to reflect the correct surname of the respondent/landlord, as listed on the style of cause page of this Decision.

Additionally, the tenant submitted a 1-page written statement from her son and another 1-page written statement from an unknown party, 2 days before the hearing. The tenant was informed that I decline to consider this evidence as it was not served in the appropriate time required by the Rules.

Other than this evidence issue, both parties confirmed receipt of the other's evidence and submissions.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation, which includes the return of her security deposit?

Is the tenant entitled to an order requiring the landlord to return her personal property?

Background and Evidence

The tenant submitted this tenancy began on February 15, 2017 and that it ended on July 11, 2017, when she vacated the rental unit. The evidence confirmed that the tenant's application here was filed on July 5, 2019.

The tenant submitted she paid a security deposit of \$710.00, and the landlord has not returned it.

Upon my inquiry, the tenant submitted that she has not provided the landlord a written forwarding address, but did tell him verbally.

The tenant's monetary claim is \$34,710.00, comprised of \$710.00 for her security deposit and \$34,000.00 for the value of her personal possessions.

During the hearing, the tenant submitted that she was no longer interested in the return of her personal property, as she knows the landlord put all of it in the dump; rather, she wanted the amount of \$34,000.00.

The tenant's relevant evidence included handwritten statements, some of which were not readable, other pages with numerous listed items, other pages listing specific items of personal property with a value by the item, other pages with explanations of events during the tenancy, a copy of an application for dispute resolution with attached Notices

to end the tenancy, which shows an original date of November 5, 2018, with that date being marked out, to show a date of May 24, 2019, and photos.

In support of her application, the tenant submitted that the landlord came to the rental unit on July 10, 2017, and told her to be out of the rental unit by July 11, or he would take her belongings to the dump.

The tenant said that her original co-tenant moved out early in the tenancy and damaged some of her furniture.

The tenant submitted that she wanted to replace her original co-tenant with roommates and had the landlord's permission to rent out other bedrooms. The tenant submitted that her subsequent roommate took some of her belongings as well, and the police were called.

As to the tenant's photographic evidence, some photos showed what appeared to be rotten food in the freezer, another photo showed a pool of mayonnaise in the corner of a couch, and other photos were of stained bedding. Upon my inquiry, the tenant explained a roommate put mayonnaise on the couch and left her bedding stained. It was not clear to me what the explanation was for the rotten food in the freezer.

The tenant also submitted photos of the rental unit when she had it advertised sometime in April or May 2017, seeking new roommates.

The tenant said that the other photos showed items on her shelves and a countertop.

As to the amount of her monetary claim, the tenant submitted that the value of her personal property was more than \$34,000.00 as claimed; however, the Residential Tenancy Branch Rules ("RTB") staff informed her the jurisdictional limit under the Act was \$35,000.00.

Landlord's legal counsel's response-

Between her written and oral submissions, the landlord's legal counsel stated that the landlord had issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent, on June 17, 2017. The landlord mistakenly issued this Notice, as the reasons to end the tenancy were the alleged illegal activities of the tenant, as complained of by the upper tenants, and not for unpaid rent.

The landlord issued the tenant another 10 Day Notice to End Tenancy for Unpaid Rent on July 1, 2017, for the amount of \$100.00 owing for June 2017.

The landlord received notification from the upper tenants that the tenant and additional occupants were observed moving their items and belongings out of the rental unit during the last week of June and the first week of July 2017.

According to the landlord's legal counsel's submissions, the landlord went to the rental unit on July 11, 2017, and found that the rental unit had been abandoned. According to the submissions, the only items left in the rental unit were two bags of garbage.

The landlord's legal counsel argued that the tenant has not proven a monetary value of items claimed and was inconsistent with her claim during the hearing.

The landlord's legal counsel questioned the tenant's timing of her application, two years after the tenancy ended.

Analysis

Based on the evidence before me and the balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

Security Deposit-

The tenant was informed at the hearing that her claim for a return of her security deposit was being dismissed.

Under the Act, a tenant is required to provide their written forwarding address to the landlord within one year of the tenancy ending. If a tenant fails to do this, the landlord may keep the tenant's security deposit.

As the tenant has never provided the landlord with her written forwarding address, as confirmed at the hearing, I find the landlord is entitled to retain it.

I dismiss the tenant's claim for a return of her security deposit, without leave to reapply.

Monetary Claim, \$34,000.00-

I find the tenant submitted insufficient evidence to support her monetary claim. Specifically, the tenant failed to provide a breakdown for the claimed amount of \$34,000.00, as is required by section 59(2)(b) of the Act, and she confirmed she only put in this amount due to the jurisdictional limit of the Act of \$35,000.00. When adding the amounts listed for some of the items, the sum exceeded \$40,000.00.

Additionally, the tenant listed many, many other items in a rambling manner and she agreed that another tenant removed some items.

I find the photos, some of which showed damaged furniture and rotten food and some of which were taken months before the end of the tenancy, failed to prove that the landlord removed her belongings or that the belongings were valued at an even amount of \$34,000.00.

Additionally, I find the tenant has submitted insufficient evidence that she vacated the rental unit without taking her personal property. I find it just as likely as not that the landlord attended the rental unit to find it abandoned, with only two bags of garbage remaining.

Due to the above, I find the tenant has not proven on a balance of probabilities that she left her personal property in the rental unit or that the landlord removed her belongings. Also, as stated above, I find the tenant has not proven a loss or a value of any claimed loss, due to the inconsistent and contradictory evidence.

For these reasons, I dismiss the tenant's application, without leave to reapply.

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 16, 2019

Residential Tenancy Branch