



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FFT

Introduction

On January 22, 2020, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement. The Tenant also requested the return of personal property.

The matter was scheduled for a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

Preliminary and Procedural Matters

The Applicant Tenant made an error in the application by providing an incorrect address for service of documents. The Landlord testified that he sent his documentary evidence to the address that the Tenant’s son provided for service of documents. The Tenant’s son stated that the Tenant did not receive the Landlords documentary evidence.

Since the issues in the application are very narrow, the hearing proceeded based on the direct testimony of the parties at the hearing.

Issues to be Decided

- Is the Tenant entitled to a monetary order for damage or loss?
- Is the Tenant entitled to the return of personal property?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on November 1, 2018 as a one-year fixed term tenancy. Rent in the amount of \$1,040.00 is due to be paid to the Landlord by the first day of each month. A security deposit of \$480.00 was paid by the Tenant to the Landlord.

The Tenant is seeking compensation in the amount of \$520.00 for an overpayment of December 2019 rent.

The Tenant testified that she paid the entire rent owing under the tenancy agreement for the month of December 2019. The Tenant testified that while she was in the process of moving out of the rental unit she returned to the unit and found that the locks had been changed and she did not have access back into the rental unit.

The Tenant testified that there were a number of possessions remaining in the rental unit. The Tenant testified that the Landlord was contacted to arrange the retrieval of her possessions and the Landlord informed the Tenant that the possessions had been disposed of.

In reply, The Landlord provide testimony confirming that the Tenant paid the full rent owing for December 2019. He testified that the Tenant never gave him a written notice to end the tenancy. The Landlord testified that he observed that the Tenant had moved 90% of her possessions out of the unit; so, he determined that the Tenant had abandoned the rental unit. The Landlord changed the locks to the unit.

The Landlord testified that he determined that the Tenant's possessions had a value of less than \$500.00 so he disposed of the Tenant's possessions.

Analysis

Section 7 of the Act provides,

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.

Pursuant to section 24 of the Residential Tenancy Regulation 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 the tenant leaves the personal property on residential property

(b) 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.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

Based on the above, the testimony and evidence of the Landlord and Tenant, and on a balance of probabilities, I find as follows:

December Rent

The parties testimony was in agreement that rent owing for December 2019 was paid in full by the Tenant. Regardless of whether or not the Tenant gave proper notice to end the tenancy at the end of December 2019; I find that the Landlord did not have a right to treat the rental unit as abandoned. Rent was paid and the tenancy was ongoing when the Landlord changed the locks and prevented access to the Tenant. Since rent was paid in full and the Landlord prevented access, the Landlord is responsible to compensate the Tenant.

I grant the Tenant the amount claimed of \$520.00.

Return of Personal Property

I find that the Landlord did not have a legal right to consider that the Tenants personal property was abandoned. The Tenant had not vacated the property and had paid rent for the entire month. I find that the Landlord breached section 24 of the Tenancy Regulation.

Since the Landlord has disposed of the Tenant's personal property, the Tenant has leave to reapply for Dispute Resolution seeking compensation for the loss of property.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful with her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

The Tenant established a monetary claim in the amount of \$620.00. I grant the Tenant a monetary order in the amount of \$620.00. This order must be served on the Landlord and may be enforced in Provincial Court.

Conclusion

The Tenant's application was successful. The Tenant paid the full rent for December 2019 and the Landlord changed the locks to the unit without legal reason on or before December 17, 2019. The Landlord owes the Tenant \$520.00 for an overpayment of rent.

The Landlord incorrectly determined that the Tenant had abandoned the rental unit and disposed of some of the Tenant's possessions. The Tenant has leave to reapply for Dispute Resolution seeking compensation for the loss of property.

I grant the Tenant a monetary order in the amount of \$620.00.

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: March 24, 2020

Residential Tenancy Branch