



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

RP appeared for the tenants in this hearing. JG testified on behalf of the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with copies of the tenants' application and evidence. The landlord did not submit any written evidence for this hearing.

Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit?

Are the tenants entitled to a monetary order for compensation for monetary loss under the *Act*, regulation, or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on June 17, 2019, with monthly rent set at \$1,150.00, payable on the first of the month. The landlord collected a security deposit of \$575.00, which the landlord still holds.

The tenant testified that she was away for most days of the week taking care of a friend, and discovered that the landlord had entered the residence without her permission, and without proper notice. The tenant testified that the landlord had also changed the locks and ended the tenancy some time before Christmas. The landlord testified that the tenants had abandoned the property, and on December 10, 2019 he changed the locks. The landlord submitted a video of him entering the rental unit, which he believes was abandoned by the tenants based on the condition the tenants had left the rental unit. The landlord also provided photos of the items left behind, as well as of the notices posted on the tenants' door. The landlord's photo shows 10 Day Notices as well as a notice that reads "Unit Abandoned: Please Call..". The landlord testified that the tenants had not paid rent since October 2019, which the tenants dispute.

The tenants are requesting the return of their security deposit. The tenant is testified that she had provided the tenants' forwarding address to the landlord on January 5, 2020 through the landlord's agent, as well as by registered mail to the landlord on or about March 16, 2020. The tenant did not provide the tracking information for this package. The landlord disputes that he had ever received the tenants' forwarding address.

The tenant is also seeking compensation for the following losses:

Item	Amount
2 beds	\$500.00
Television	2,500.00
Fireplace	250.00
Coffee machine & dishes	200.00
Coffee end tables	100.00
Cameras	800.00
Sofa set mattress	275.00
Moving Expenses	2,820.00
Total Monetary Order Requested	\$7,545.00

The tenant testified that they had lost the above items when the landlord locked them out. The tenant testified that many of the items above were brand new, including the coffee machine.

The landlord testified that the tenants had abandoned the rental unit, leaving only old items such as mattresses and garbage. The landlord disputes that the tenant had left

behind a fireplace, tv, or coffee machine. The landlord is disputing the entire claim as the tenants abandoned the rental unit, which resulted in a monetary loss for the landlord to clean the rental unit and dispose of the items left behind. The landlord also testified that the tenants failed to provide receipts or proof of the value of the losses listed above.

During the hearing, the landlord did confirm that the tenants' security cameras were still at the home, and the landlord agreed to send the items back to the tenant by registered mail to the address listed on the tenants' application on or before July 14, 2020. The tenant consented to this agreement.

Analysis

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

Although the tenant testified that she had provided the landlord with the tenants' forwarding address on more than one occasion, the landlord disputes that the tenants had provided their forwarding address in writing. In light of the disputed testimony, and in absence of sufficient evidence to support the provision of the tenants' forwarding address, I am not satisfied that the tenants had provided the landlord with their forwarding address in writing. Accordingly I dismiss the tenants' application for the return of their security deposit with leave to reapply. The tenants must provide their forwarding address to the landlord in writing, and the landlord must, within 15 days of the receipt of that address, either return the tenants' security deposit, or make an application for dispute resolution. If the landlord fails to comply with section 38 of the *Act*, the tenants may reapply. Liberty to reapply is not an extension of any applicable limitation period.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I have considered the evidence submitted by both parties, as well as the sworn testimony in this hearing. The landlord admitted that he had changed the locks as he believed the suite to be abandoned. As stated above, the burden of proof is on the tenants to support the actual value of the losses they incurred due to the landlord's actions. I find that the tenants did not meet evidentiary burden to support the losses claimed in this application. Although the tenant testified that several of the items listed were new, the tenant did not provide sufficient evidence to support the age or condition of the items, nor did the tenants provide receipts or invoices in support of the claim. Although the tenants did provide an estimate for the cost of moving, I do not find this sufficient to support the actual loss incurred by the tenants. For these reasons, I dismiss the tenants' entire monetary claim without leave to reapply.

Conclusion

During the hearing, the landlord did confirm that the tenants' security cameras were still at the home, and the landlord agreed to send the items back to the tenant by registered mail to the address listed on the tenants' application on or before July 14, 2020. The tenant consented to this agreement.

The tenants' application for the return of their security deposit is dismissed with leave to reapply.

The remainder of the tenants' 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: July 3, 2020

Residential Tenancy Branch