



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RPP

Introduction

On October 6, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking a return of his personal property pursuant to Section 65 of the *Act*.

The Tenant also indicated on his Monetary Order Worksheet that he was seeking a return of his security deposit pursuant to Section 38 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord by registered mail on October 9, 2020 and the Landlord confirmed that he received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package. In addition, the Tenant advised that he served his audio recorded evidence to the Landlord by Whatsapp. The Landlord confirmed that he received this evidence and that he was able to listen to these recordings. As such, I have accepted all of the Tenant’s evidence and will consider it when rendering this Decision.

The Landlord advised that he served his evidence to the Tenant on October 15, 2020; however, he did not have any proof of this service. The Tenant stated that he did not receive any evidence from the Landlord. Without any proof of service of this evidence, I am not satisfied that the Tenant was served the Landlord’s evidence in accordance with

the *Act*. As such, I have excluded the Landlord's evidence and will not consider it when rendering this Decision.

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

- Is the Tenant entitled to a return of his security deposit?
- Is the Tenant entitled to monetary compensation?
- Is the Tenant entitled to a return of his personal property?

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 tenancy started on September 1, 2020 and that a tenancy agreement was signed where the Tenant was one of three co-tenants. Both parties were unsure of many details of the tenancy, but rent was established at or around \$1,720.00 per month and it was due on the first day of each month. The Landlord stated that a security deposit was not paid as per the tenancy agreement. However, the Tenant advised that he paid a \$288.00 security deposit to the tenant that was previously in the rental unit, which was then supposed to be paid to the Landlord.

Clearly, neither party had a grasp of what had transpired prior to this tenancy starting as the Landlord appeared to have had many parties come and go, and he demonstrated little regard for managing this rental unit in accordance with the *Act*. It appeared as if the only constant documentary evidence is the written tenancy agreement binding the Tenant, as a co-tenant, to the Landlord. However, neither party submitted a copy of this tenancy agreement for consideration.

The Tenant stated that on September 30, 2020, one of the co-tenants was diagnosed with COVID, so he was advised by the local health authority to stay with a friend. He

advised the Landlord on this day that he was contemplating moving out, but the Landlord informed him that he could not do that. The Tenant went back to the rental unit to get some belongings only to discover that his property was put into the carport. He took some of his property and called the Landlord the next day about it, but the Landlord denied moving these items. He stated that the Landlord then put his bed and a chair into the carport, and these were damaged by rain. As the bed is damaged now, he is not seeking a return of his personal property, but compensation in the amount of **\$350.00**. He stated that he paid this amount to a friend of his for the bed, and it was still in good condition before the Landlord removed it. He submitted pictures of his property being removed from the rental unit, and he referred to audio recordings with the Landlord that he believes supports his position that the Landlord illegally removed the Tenant's property.

The Landlord acknowledged that the Tenant's property was put into the covered carport; however, he denied moving it and he did not know who put it there. He stated that a co-tenant advised him that the Tenant paid only \$60.00 for the bed. He submitted that he did not have keys to the rental unit as the Tenant did not return them. He stated that the Tenant took his clothing from the rental unit on September 23, 2020.

The Tenant advised that he is seeking compensation in the amount of **\$288.00** because he paid this amount as a security deposit to a person that lived in the rental unit before he took occupation. As well, he advised that he did not give the Landlord a forwarding address in writing.

Finally, the Tenant advised that he is seeking compensation in the amount of **\$1,500.00** for mental distress. He stated that he was threatened by the Landlord on September 30, 2020 to move out of the rental unit. He submitted that the Landlord told him that his property would be thrown out if rent was not paid. He went back to the rental unit the next day and discovered that his personal property was removed from the rental unit. He collected what belongings he could and then left. He could not identify what Section of the *Act* that allowed for compensation for a claim of "mental stress"; however, he referenced Policy Guideline # 16 to support his claims for compensation. He claimed that the amount he was seeking was commensurate with the time and stress that occurred when looking for a new place to live while going to school.

The Landlord advised that the Tenant stated that he moved due to COVID. He stated that the co-tenants have been smoking drugs, that the police have been called, and that they have been evicted. He disputed moving the Tenant's property and he stated that one of the co-tenants told him that they moved the Tenant's property outside.

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

I find it important to note that there is some uncertainty over if a security deposit was paid to the Landlord or not, and I have made no finding on this matter. Pursuant to Section 38 of the *Act*, if the Tenant believes he paid a security deposit to the Landlord and wants it returned, he must provide a forwarding address in writing to the Landlord first.

The undisputed evidence is that the Tenant has not provided the Landlord with his forwarding address in writing until making his Application seeking a return of the deposit on October 6, 2020 and sending this package to the Landlord on October 9, 2020. As such, I find the Tenant's Application to be premature. Therefore, the Landlord is put on notice that he now has the forwarding address and he must deal with the security deposit pursuant to Section 38. The Landlord is deemed to have received this Decision **5 days** after the date it was written and will have 15 days from that date to deal with the deposit.

Again, I must reiterate that there is some uncertainty over if a security deposit was ever paid to the Landlord or not. If the Landlord believes that no security deposit was paid, and if the Tenant believes one was paid, the Tenant can then re-apply for double the deposit, pursuant to the *Act* if the Landlord does not deal with the security deposit within 15 days of being deemed to have received this Decision. It would be up to the next Arbitrator to determine if a security deposit was paid to the Landlord or not.

With respect to the Tenant's claims for compensation and a return of his personal property, as the Tenant advised that he is no longer seeking a return of his personal property, only the claims for monetary compensation will be addressed.

Regarding the Tenant's 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."

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Tenant's claims for compensation in the amount of \$350.00 for the cost of replacing a bed, while the Landlord contends that he did not remove the Tenant's property from the rental unit, I find it important to note the following exchanges by the parties in the audio recordings submitted by the Tenant:

Tenant: Why did you put my stuff outside?
Landlord: You can stay there, I don't care. You can move back in if you want.
Tenant: Why did you put my stuff outside, that's why I'm asking without asking me?
Landlord: Well you said you're not going to pay rent, you don't want to stay there.

Tenant: Why did you go to my room and why did you touch my stuff?
Landlord: I didn't do it myself.
Tenant: Then who did it?
Landlord: I don't know... someone helped me do it.
Tenant: Someone helped you do it? Then you were there, right?
Landlord: What do you mean?
Tenant: I want to know who put my stuff outside.
Landlord: I don't know, I didn't.
Tenant: You didn't?
Landlord: You didn't pay the rent.
Tenant: Answer my question. You said you didn't put my stuff outside?
Landlord: Don't yell at me.

- Landlord:** All I have to do is change the locks anyways. I already changed the locks.
- Tenant:** I mean, you can't do that. You can do whatever you want to do? So, I just want to know, I wanted to figure out who touched my stuff. Until I figure that one out, I'm not going to give the keys back to you.
- Landlord:** Well if you're not... ok did you pay the rent?

When reviewing the totality of the evidence before me, while the Landlord denies moving the Tenant's property out of the rental unit, based on the above excerpts, it is evident that the Landlord has acknowledged breaching the *Act* by removing the Tenant's property from the rental unit. I find it important to note that this is contrary to the solemnly affirmed testimony that he provided during the hearing.

In addition to the Landlord also contradictorily stating in the audio recordings that he did not move the Tenant's property, when reviewing the audio, it is evident to me that the Landlord was also being evasive when the Tenant asked about his property. Furthermore, in the audios, the Landlord acknowledged changing the locks as well, which is another breach of the *Act*.

Based on the above, I am satisfied that the Landlord's solemnly affirmed testimony during the hearing was entirely untruthful. As a result, I find that this causes me to doubt the credibility and truthfulness of the Landlord's submissions on the whole. Given that his combative, belligerent demeanour during the hearing was consistent with his aggressive, profane attitude in the audio recordings, and in addition to the disorganized, indifferent manner with which he managed the rental unit, I am satisfied that the Landlord acted in whatever manner he saw fit, regardless of if it was contrary to the *Act*. Consequently, I find it more likely than not that the Landlord moved the Tenant's property out of the rental unit, in contradiction with the *Act*.

In assessing the value of the amount that should be awarded to the Tenant for the bed, I find it important to note that the Tenant has provided some evidence of this bed that was lost. However, there has been little evidence submitted to corroborate that the value of the bed was equivalent to the amount that he is seeking on this Application. The burden of proof is on the Tenant to substantiate this value, but I am not satisfied from the scant evidence that the Tenant has corroborated this claim. While I agree that the Landlord illegally moved the Tenant's property, based on the little evidence provided, I find that the Tenant should be awarded a monetary award in the amount of **\$175.00** for the loss of the bed.

With respect to the Tenant's claims for compensation in the amount of \$1,500.00 for the cost of "mental distress", the Tenant was advised that there were no provisions in the *Act* which compensated a party for this type of loss that the Tenant was claiming. However, as I am satisfied that the Landlord breached the *Act* by removing the Tenant's property from the rental unit and changing the locks without the authority to do so, I find that the Tenant should be entitled to some compensation. Given that the Tenant provided insufficient or persuasive evidence to establish how the amount that he was seeking was equivalent to the loss that he suffered, pursuant to Section 67 of the *Act*, I grant the Tenant an amount that is commensurate with what I believe to be a loss due to the Landlord's multiple breaches of the *Act*. As such, as the Tenant had only lived in the rental unit for approximately one month, I grant him a monetary award in the amount of **\$225.00** to satisfy this claim.

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$400.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the Tenant's Application for a return of the security deposit with leave to reapply. The Landlord is deemed to have received this Decision **5 days** after the date it was written and will have 15 days from that date to decide how to deal with the deposit.

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: December 21, 2020

Residential Tenancy Branch