



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order that the landlord return the tenant's personal property; and to recover the filing fee from landlord for the cost of the application.

The hearing was originally scheduled for October 20, 2020, and I adjourned the hearing at the request of the tenant in order for an Advocate or Legal Counsel to assist the tenant at the hearing. My Interim Decision was provided to the parties adjourning the hearing to January 29, 2021. .

The tenant attended the hearing on the first scheduled date however the landlord did not attend. On January 29, 2021, the tenant again attended, without an Advocate or Legal Counsel to assist, and gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord joined the call.

On the first scheduled date, I found that the landlord had been served with the Hearing Package by registered mail on September 11, 2020; the tenant had provided a copy of an envelope addressed to the landlord with a Registered Mail sticker on it as well as a Canada Post cash register receipt.

The landlord was served at the same address of the rental unit, and the tenant testified that she had recently obtained a Title Search and was permitted to provide a copy after the hearing had concluded. I now have a copy, which is dated September 12, 2020 which specifies the landlord's name and address, which is the same address as the rental unit.

All evidence of the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established that the landlord is in possession of the tenant's personal property?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for illegally moving the tenant out of the rental unit?

Background and Evidence

The tenant testified that this tenancy began around the last week of June in 2017 with the ex-spouse of the landlord, and with the landlord on a month-to-month basis starting March 1, 2018. The tenancy ended on September 3, 2018. Rent in the amount of \$600.00 per month was payable on the 1st day of each month. No security deposit or pet damage deposit was collected. The rental unit is a basement suite and no one lived in the upper level of the home during this tenancy.

The tenant further testified that on September 3, 2018 the landlord said she was going to paint the rental unit to assist with selling the home, but the tenant didn't want to move out. The tenant and her mother and 2 children were residing in the rental unit. The landlord had men there when she told the tenant to move her stuff out, and the tenant was under pressure and intimidated. No notice to end the tenancy was given, so the tenant agreed to leave to allow for painting, and put all of the tenants' belongings in the middle of rooms. The landlord sent a person to get the tenants, who told the tenant to pack a toothbrush, clothing and other basic things, and to leave the majority of things there. The tenant and family were allowed to stay at the person's home for the night. Painters never arrived, however the tenant went back that night to see if the family could sleep there and use the bathroom, but the locks had been changed.

The person that the tenant stayed with more or less kicked the tenants out on September 4, 2018, saying she would get a key for the rental unit so the tenant could go back in case the tenants needed to get other belongings.

The landlord had hired someone to move the tenants' belongings out of the rental unit, but the tenant didn't want to move out under such circumstances. The tenant had found another place to live, but it was not yet ready for new tenants. Toward the middle of September, 2018, the landlord sent threatening text messages to the tenant telling her to move her stuff away from the suite or she would get others to do it. The tenant has

provided an email from another person who allowed the tenants to stay in another place for almost 2 months for a fee of \$5,000.00, which the tenant claims from the landlord.

The tenant returned to the rental unit in October, 2018 and found the tenants' belongings outside the rental unit in the weather. Photographs have been provided for this hearing showing clothing, children's toys and other items in what appears to be a carport, which the tenant testified were taken on October 4, 2018. The tenant called police who told the tenant to contact the Residential Tenancy Branch. The tenant moved some of the clothing and mattresses, and it took a few trips to get the other items that were exposed to the weather.

The tenant moved into a new rental unit in late October, 2018, and went back one time in late 2018 during an open house, including the basement suite and saw the tenants' belongings there in cupboards and in the storage room. Furniture had been moved out by the landlord to the outside of the door to the suite.

The tenant has recently contacted the selling agent who said that the rental house has not yet been sold.

Some items belonging to the tenant were not in the boxes and bags left outside by the landlord, such as a flashlight, some tools, a rice cooker, a pressure cooker, cleaning supplies, items from a storage shelf and stuff in freezer. The tenant seeks an order that the landlord return the tenant's personal belongings.

The tenant claims \$15,000.00 for the landlord's failure to do painting which required the tenants to move out. The claim is double the amount of 12 months' rent as well as the \$5,000.00 for the temporary suite, partial moving and storage costs.

A copy of an Interac e-Transfer in the amount of \$150.00 has also been provided for this hearing dated October 4, 2018, with a note thanking the recipient for letting the tenants store belongings at his space. Another e-transfer in the amount of \$100.00 dated October 4, 2018 has been provided for this hearing with a note thanking the recipient for helping with moving.

Analysis

The *Residential Tenancy Act* specifies how a tenancy ends. In the case of a landlord who wishes to renovate a rental unit in such a manner that it needs to be vacated, the landlord must give the tenant 4 months' notice in the approved form. In the case of a sale of the rental unit, the landlord must give the tenant 2 months' notice in the approved form, and must not give such a notice until all conditions for the sale of the home have been satisfied

and the purchaser has asked the owner in writing to give the notice ending the tenancy because the purchaser intends in good faith to occupy it. If, in either case, the landlord fails to use the rental unit for the purpose contained in the notice, the landlord must compensate the tenant the equivalent of 12 months' rent.

In this case, the tenant felt intimidated and vacated the rental unit for the landlord to have the rental unit painted so it could be sold. The rental unit has not been sold, and the landlord has not re-painted, but had the locks changed and the tenant's belongings were left outside. I have reviewed the photographs provided by the tenant and I am satisfied that the personal property of the tenant and family were left in the elements, and the tenant is entitled to compensation equivalent to 12 months' rent, or \$7,200.00.

The law with respect to such compensation is punitive, and the *Act* does not permit me to award further compensation to punish the landlord, but does permit me to award nominal damages where the value of damages suffered is not straightforward, where there it has been proven that there has been an infraction of a legal right, and I find that the tenant is entitled to nominal damages in the amount of \$500.00.

I also accept the tenant's evidence regarding storage fees and assistance with moving the items off of the landlord's property, and I accept the claims of \$100.00 and \$150.00.

With respect to the tenant's claim for \$5,000.00 to stay at another location temporarily, I have read the email, however it is not signed by anyone and there is no tenancy agreement. Therefore, in my view it is not proof of the claim. However, I am satisfied that the tenant has established 2 months' rent from the landlord in this case, or \$1,200.00.

With respect to the tenant's application for an order that the landlord return the tenant's personal property, I am not entirely convinced that the items are still in the possession of the landlord, given that more than 2 years have now passed. However, the tenant believes the landlord is still in possession of a flashlight, tools, a rice cooker, a pressure cooker and personal items in the freezer, and I order the landlord to return all of those items to the tenant forthwith.

Since the tenant has been partially successful, the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$9,250.00.

I further order the landlord to return the tenant's personal items, including, but not limited to a flashlight, tools, rice cooker, pressure cooker and all items left in the freezer of the rental unit forthwith.

This order is final and binding and may be enforced.

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: February 03, 2021

Residential Tenancy Branch