



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, RPP, MNDL-S, FFL

This hearing was reconvened from an adjourned hearing held February 12, 2021 in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on October 20, 2020 for:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on October 30, 2020 for:

1. An Order for the return of personal property - Section 65;
2. A Monetary Order for compensation - Section 67; and
3. An Order for the return of the security deposit - Section 38.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant provides a witnessed proof of service of its evidence package being posted on the door January 19, 2021.

Preliminary Matter

The Tenant claims \$100.00 for the costs of laundry, \$265.30 for loss of internet/wifi/cable, \$7,680.00 for loss of income and \$3,488.25 for loss of quiet enjoyment. The Tenant confirms that these losses arose during the tenancy and are

not related to their compensation claims for being locked out of the unit or for the return of their belongings

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the Tenant's claims for laundry, internet/wifi/cable, loss of income and loss of quiet enjoyment occurred during the tenancy and are not related to the matters set out below, I dismiss these claims with leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to return of personal property?

Is the Tenant entitled to the monetary amounts claimed?

Relevant Background and Evidence

The following are agreed facts: the tenancy started on September 1, 2019. Rent of \$1,100.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$550.00 as a security deposit. In a Decision dated January 17, 2019, the Landlord was granted an order of possession. It is noted that this order is stated to be effective two days after the order is served on the Tenant. The Tenant sought a review of the Decision and order and in a Review Consideration dated February 4, 2019 the Tenant's application for the review was dismissed. In a previous Decision dated October 19, 2020, the Landlord was deemed to have received the Tenant's forwarding address on that date.

The Landlord states that the Tenant moved out of the unit on January 19, 2019. The Landlord states that the Tenant left the unit with damages and claims retention of the security deposit alone. The Landlord provided no monetary order worksheet to detail

the costs arising from the claimed damages. The Landlord provided no invoices for the global cost claimed.

The Tenant states that they were not served with the order of possession and did not move out of the unit but were locked out of the unit on January 24, 2019. The Tenant states that when they arrived at the unit the Landlord's Agent and boyfriend chased the Tenant away with a golf club while yelling profanities. The Tenant states that the police asked them to leave as the Landlord showed the police the previous Decision and order of possession. The Tenant states that they were not allowed to remove their belongings from the unit.

The Landlord agrees that the Tenant was locked out of the unit without the order of possession being served on the Tenant and without the Landlord having a writ of possession. The Landlord states that they had obtained the services of the bailiff on January 8 or 9, 2019 in case one was needed and that the order of possession was sent to the bailiff but not given to the Tenant. The Landlord states that the bailiff appeared at the unit on January 21, 2019 and that the bailiff witnessed that nothing was in the unit. The Landlord states that on January 24, 2019 the bailiff informed the Landlord that it was okay to change the locks. The Landlord states that they tried to have the bailiff appear as a witness and that they did not obtain a witness statement from the bailiff. The Landlord states that while they had a phone number for the Tenant the Landlord was blocked and that for this reason no offers for a move-out inspection was made.

The Tenant states that they did not block the Landlord's phone number and that they did not have the phone number of the Landlord's Agent.

The Tenant states that at the time of the lock out some of their items were found were outside covered by a tarp, The Tenant states that it looked like furniture items, which included two sofas and a BBQ. The Tenant states that they had only left one sofa

outside and that everything else under the tarp had not been left by the Tenant. The Tenant provides a witness letter from the Tenant's current landlord. It is noted that this letter dated October 26, 2020 sets out that the Tenant was due to move into the unit on February 1, 2020 but that on January 24, 2020 the Tenant was given early access due to being locked out of the other rental unit. This letter refers to the Tenant's move-in without any items and the Tenant's subsequent piecing together of furniture.

The Tenant claims \$10,616.45 for the replacement costs of furniture, detailed in the monetary order worksheet, and household items. The Tenant provides photos of the unit and receipts.

The Landlord states that no furniture was left outside by the Landlord and that they were probably put there by the Tenant on January 19, 2019 when the Landlord saw a moving van at the unit. The Landlord states that the Tenant was seen loading the van with items from inside the unit. The Landlord states that they saw 2 helpers and that the Tenant took about 5 or 6 hours loading the van. The Landlord states that they saw furniture outside on January 19, 2019. The Landlord states that the items sat outside uncovered for 2 or three days after which the Landlord covered them with a tarp as there were rats outside. The Landlord submits that the Tenant's belongings were returned to the Tenant and provides a receipt for a moving truck dated March 19, 2019.

The Tenant submits that the Landlord did not return their property. The Tenant submits that the Landlord's moving truck invoice shows an hour trip and that this would not be sufficient time to load and deliver the Tenants property to its new address.

Analysis

Section 57(2) of the Act provides that a landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules. Given the undisputed evidence that the Tenant was never given the order of possession and that the Landlord

did not have a Writ of Possession I find that the Landlord had no right to change the locks to the unit and in doing so breached the Act.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. As the Landlord changed the locks on January 24, 2020 without rights, I find that the Landlord must compensate the Tenant for the damage or loss that resulted from the Landlord's act. Given the Tenant's supported evidence from its subsequent landlord and considering that the Landlord provided no supporting evidence of the unit being empty when the bailiff was present on January 21, 2020, I find on a balance of probabilities that the Tenant had not moved any of its belongings out of the unit on January 19, 2020. Although I find it curious that the police did not allow the Tenant access to the unit, given this undisputed evidence I accept that the Tenant was not allowed to retrieve her belongings.

Although the Landlord provides a receipt for a truck rental, the Landlord provided no witness evidence that this rental truck was in fact used to deliver the Tenant's belongings or any photos or video evidence of the delivery. Given the Tenant's evidence, that I consider to be more persuasive in the circumstances, I find on a balance of probabilities that the Landlord did not return the Tenant's belongings.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. Given the Tenant's receipts for the replacement of furniture and household items and without any dispute by the Landlord for the costs claimed I find on a balance of probabilities that the Tenant has substantiated an entitlement to the claimed amount of **\$10,616.45**. As the Tenant has been fully compensated for its belongings kept at the unit by the Landlord and as there

is no evidence that the Landlord still has this property, I dismiss the claim for return of the personal property.

As the Landlord provided no evidence to support the damage claimed to the unit such as a move-out inspection report and as the Landlord provided no receipts to support that any costs were incurred as a result of damage to the unit, I find that the Landlord has not substantiated its claim for damages to the unit and I dismiss this claim.

Section 77(3) of the Act provides that a decision or an order of the director under this Part is final and binding on the parties. Not raised by the Parties at the hearing but noted in the previous Decision dated January 17, 2019, the Landlord was authorized in that Decision to keep the security deposit that was set off against the Landlord's entitlement to unpaid rent. I note that no mention of this authorization was made in the subsequent Decision dated October 19, 2020 that gave the Tenant leave to reapply for return of the security deposit unless the Landlord either made an application to claim against the security deposit or returned the security deposit. However, as the security has been dealt with in the previous Decision dated January 17, 2019, I find that neither Party is entitled to an order in relation to the security deposit. I therefore dismiss the Tenant's claim for return and the Landlord's claim for retention of the security deposit.

As the Landlord's claim for retention of the security deposit has not been successful, I dismiss the Landlord's claim for recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$10,616.45**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 12, 2021

Residential Tenancy Branch