



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on February 3, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- an order for the Landlord to return her personal property.

The Tenant attended the hearing. The Landlord also attended the hearing with her agent, L.M. All parties provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's application, Notice of Hearing, and evidence. The Landlord did not provide any documentary evidence.

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 Matters

At the outset of the hearing, there was a discussion regarding what remedies the Tenant is still seeking at this time. The Tenant confirmed that she moved out many months ago, and the Landlord confirmed they do not hold any of the Tenant's possessions, and never did. The Tenant acknowledged that she did not have any evidence to demonstrate the Landlord currently holds any of her possessions. The

Tenant chose to focus this hearing on her request for monetary compensation, and not her request for the return of her personal property. I hereby amend the Tenant's application accordingly. The remaining ground will be discussed further below.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this Decision, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

The Tenant stated that she moved into this rental unit in March of 2020, with her partner. Both parties were Tenants on the Tenancy Agreement. The Tenant stated that on January 12, 2021, she had to flee the rental unit due to a serious domestic abuse incident. The Tenant stated that her partner is being charged with aggravated assault and uttering threats. The Tenant stated that she fled to a shelter on January 12, 2021, and informed the Landlord at that time that she had to leave the rental unit. The Tenant stated that she didn't return the keys, but rather kept them because she planned to return to gather some of her belongings at a later time.

The Landlord agrees that the Tenant left the rental unit on January 12, 2021, but disagrees with the Tenant that she didn't give the keys back. The Landlord stated that the Tenant returned the keys on January 15, 2021, and at that time the Tenant said she would never be back to live in the unit, and that she was going to cancel the house insurance, regardless of whether or not her partner continued living there.

The Tenant stated that she was in constant communication with the Landlord from January through till March, in an attempt to get back some of her possessions, which she left in the rental unit when she fled. The Tenant stated that her partner immediately changed the locks to the rental unit, after she fled, and he continued to live there for several months. The Tenant stated that after a couple months of trying to arrange a time to come and pick up some belongings, she eventually got a key from the Landlord to enter the suite. However, the Tenant's partner, who is also a Tenant on the Tenancy

Agreement, changed the locks again, and physically barricaded the doors to prevent her from gaining access. The Tenant stated that she had to arrange special times to come and get her belongings because of the restraining order she had on her partner, and the fact that the police had to supervise the visit. The Tenant loosely referred to the Landlord's actions as insufficient, and feels the Landlord should have taken further steps to give her access and to get back some of her personal belongings.

The Tenant did not provide any list or itemization of what she lost, and what these items are worth. The Tenant stated she wants \$5,000.00 for the loss of some furniture, some furnishings and her "sentimental" items. The Tenant did not elaborate further on what she is seeking on this application.

The Landlord stated she was sympathetic to the Tenant, but the Landlord felt she was caught in the middle of this marital dispute. The Landlord stated that she went out of her way to make plans that could work for both the Tenant, and her partner, who was still residing in the unit after the incident on January 12, 2021. The Landlord explained that it was the Tenant's own partner, and co-Tenant, who changed the locks and prevented her from getting into the rental unit. The Landlord stated that the Tenant's partner stated that he did not trust or want the Tenant to ever come back into the rental unit, as he feared she would take some of his belongings. The Landlord stated that the Tenant and her partner were engaged in an active dispute over family property, and custody, alongside this tenancy issue. The Landlord did not feel it was appropriate for her to insert herself into their issues, as it could inflame an already volatile situation.

The Landlord stated she tried very hard to reason with both Tenants, but due to the potential for violence, and the sensitive personal nature of the disputes, she didn't feel she could help in the way the Tenant wanted. The Landlord stated that eventually she was able to help the Tenant pick up a few of her belongings, around April 18, 2021. However, the Tenant was not satisfied with the items and their condition. The Tenant feels many of her items have gone missing, but the Landlord does not feel this is her fault, as it is property that was shared between the Tenants, and it is not her job to decide which person gets which belongings, and when.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In the case before me, it appears the nature of this dispute is largely civil in nature, and is related to an ongoing family law dispute for a variety of issues between the Tenant and her ex-partner. I accept that this has been a very challenging situation for the Tenant, given the nature of some of the allegations. I also accept that this situation would have been challenging for the Landlord as well, given the fact that the Tenant and her ex-partner were both legal Tenants, with contrasting and competing wishes and demands.

For the purposes of this application, I note the Tenant bears the burden of proof to establish her claim. I also note the Tenant is seeking \$5,000.00 for compensation for the loss of her belongings. However, I find the Tenant has provided a very poor explanation as to what this amount is based on, and how the value was determined. The Tenant provided no breakdown, itemization, or verbal explanation as to what this amount is based on. I find the Tenant has failed to establish the value of her loss. As such, I dismiss the Tenant's application, in full, without leave.

Conclusion

The Tenant's application is dismissed, in full, 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: February 3, 2022

Residential Tenancy Branch