

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order requiring the Landlord to return the Tenant's personal property under section 65 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that the Landlord acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

### **Service of Evidence**

The Tenant testified that she did not serve the Landlord with her evidence. The Tenant's evidence is therefore excluded from consideration for failure to serve the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act. The Tenant testified that she received it on February 4, 2024.

### **Preliminary Matters**

The Tenant's Application for Dispute Resolution listed her mother as a co-tenant. The Landlord testified that the Tenant's mother was never on the tenancy agreement and is not a tenant and moved in without permission. The Landlord requested that the Tenant's mother be removed from the Tenant's Application for Dispute Resolution.

The Tenant testified that her mother moved in the month before the tenancy ended with the Landlord's permission. The parties agreed that a new tenancy agreement was not signed when the Tenant's mother moved in. The original tenancy agreement was not entered into evidence. The Tenant testified that she listed her mother as a tenant in this

application for dispute resolution because its her mother's belongings that she is seeking returned or compensation for.

I find that since a new tenancy agreement was not signed and the Tenant's mother was not added as a tenant, the Tenant's mother was an occupant and not a tenant of the rental property. In accordance with section 64 of the Act, I amend the Tenant's application for dispute resolution to remove the Tenant's mother from proceedings as she is and was not a tenant and therefore does not have standing to make an application for dispute resolution.

## **Issues to be Decided**

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Is the Tenant entitled to an order requiring the Landlord to return the Tenant's personal property?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

## **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on January 4, 2023 and ended on November 12, 2023.

The Tenant testified that the Landlord served her with an illegal eviction notice and that she moved out as soon as she could. The Tenant testified that she moved her possessions out by November 12, 2023 but not all of her mother's possessions were moved out at that time. The Tenant testified that her mother came back to the rental property on November 13, 2023 to collect the rest of her belongings but the Landlord had changed the locks. The Tenant testified that the Landlord threw out her mother's things.

The Tenant testified that her monetary claim is for approximately \$3,000.00 and that the most valuable items thrown out were two computers and her mother's supplements. The Tenant did not provide a breakdown in the hearing of how her monetary claim was arrived at. As noted earlier in this decision, no evidence was accepted for consideration. The Tenant's revised Application for Dispute Resolution sets out the Tenant's monetary claim as follows:

- Oleo painting- \$1,000.00
- Portrait of flowers- \$500.00

- Several handmade portraits- \$220.00
- 2 desk computers- \$600.00
- 1 detergent- \$20.00
- 1 softener- \$20.00
- 1 backpack with personal belongings- \$30.00
- 1 backpack with nutritional supplements- \$500.00
- 1 electric heater – illegible amount listed
- 2 small electric heaters- \$150.00
- 2 pots- \$75.00

The Landlord testified that the Tenant moved out over the course of three days ending on November 12, 2023. The Landlord testified that the only things left at the rental property was garbage and some cheap items including prints. The Landlord testified that the garbage included a nonfunctional computer. The Landlord testified that he took some items to the Salvation Army and Value Village and the rest to the dump. The Landlord testified that he waited until November 14, 2023 to remove the items because he wanted the Tenant to remove her items and take out her own garbage.

The Landlord testified that prints were cheap and did not have the value alleged by the Tenant.

## **Analysis**

### **Is the Tenant entitled to an order requiring the Landlord to return the Tenant's personal property?**

Section 65 of the Act states that an arbitrator may order that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned.

As both parties agree that the Tenant's property is no longer in the Landlord's possession, I find that it is not possible for the Landlord to return it. The Tenant's claim for return of personal property is therefore dismissed without leave to reapply.

### **Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?**

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

No evidence was accepted for consideration from the Tenant. No receipts for the items claimed or estimates for their replacement were provided. I find that the Tenant has not proved the value of the items the Landlord threw out and donated. As the Tenant has not proved the amount of or value of the claimed damage or loss, the Tenant claim fails. The Tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

**Is the Tenant entitled to recover the filing fee for this application from the Landlord?**

As the Tenant was not successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

**Conclusion**

The Tenant's application is dismissed in its entirety, 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 Act.

Dated: February 12, 2024

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Residential Tenancy Branch