

INTERIM DECISION

Dispute Codes MNDC, RPP, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to obtain a Monetary Order for money owed or compensation under the Residential Tenancy Act (Act), regulation or tenancy agreement, an Order for the landlord to return the tenants' personal belongings and other issues regarding the tenancy.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on March 16, 2010. Mail receipt numbers were provided in the tenants' documentary evidence. The landlord was deemed to be served the hearing documents on March 21, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared with her legal advocate, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

This hearing dealt with issues concerning the tenancy and the tenants request for the return of her personal belongings. The remainder of the tenants claim will be dealt with, if necessary, at the reconvened hearing.

Issues(s) to be Decided

- Was there a tenancy in place?
- Is the tenant entitled to an Order for the landlord to return her personal belongings?

Background and Evidence

The tenant testifies that she entered into a verbal tenancy agreement with the landlord (her sister) to rent the basement suite of the property on March 31, 2008. Rent for the basement suite was agreed at \$1,000.00 per month. This agreement was initially for April and May, 2008. The tenant also testifies that it was agreed tenant would rent the entire basement suite and the landlord would move her belongings into the upper portion of the house.

The tenant testifies that in early April, 2008 the landlords' son moved items into the basement suite instead of removing them. The tenant testifies that she confronted the landlord who refused to respond. During April, 2008 the landlord continued to come down into the basement without permission from the tenant and make meals and use her old bedroom. In mid April the tenant put a lock on the door to her basement suite. On April 19, 2008 the tenant arrived home and found the landlord had locked her out of the basement suite. The tenant testifies that she contacted the landlords' son who convinced his mother to let the tenant back into her suite.

The tenant testifies that the landlord continued to occupy her suite and the tenant made an application for Dispute Resolution. A hearing was held on May 16, 2008 and it was determined at that hearing that the Dispute Resolution Officer had no jurisdiction over the matter as the agreement continued to be a license to occupy between the tenant and her father.

At the end of May, 2008 a meeting took place between the tenant and landlord and it was agreed the tenancy could continue and the tenant agreed to pay \$1,000.00 per month and would then occupy the entire basement suite. The landlord again agreed to remove all her personal belongs from the area. At the end of June, 2008 the landlord had removed her personal belongings from the basement suite.

The tenant testifies that the tenancy continued and she paid \$1,000.00 each month which was collected by the landlords' son around the first or second week of each month and receipts were provided to the tenant (copies included in evidence). The tenant testifies that in April, 2009 the

landlords' son did not come to collect the rent cheque as usual. He came to the house walked by the tenants suite and kicked the door open while laughing. He went upstairs to visit his mother and the tenant tried to get him to collect the rent cheque again but he refused. Around the second or third week of April, 2009 the tenant went to the landlords' sons' place of work with a witness to give him her rent cheque. The tenant claims the landlords' son would not accept the cheque but said he would come to her suite later to collect it. The landlords' son did not return to collect the rent cheque.

The tenant testifies that on April 25, 2009 the tenant arrived home and found a note on her window stating she had not paid rent and the locks had been changed. The tenant contacted the RCMP who attempted to contact the landlord. The landlord was not available to talk and the RCMP member advised the tenant to find somewhere else to sleep that night. The tenant contacted a locksmith but due to the note posted in her window he declined to change the locks.

On May 01, 2009 the tenant met with her advocates who advised her to contact the RCMP again and she requested an escort from them to collect her belongings from her suite. When she arrived at her residence there were three Police Officers talking to her landlord. The tenant testifies her landlord was crying and telling the Police she had not paid her rent. The Police allowed the tenant into her suite to collect her medications only. The tenant claims the Police would not listen to her when she tried to explain her version of events. The tenant found temporary accommodation in a women's shelter and could not secure permanent accommodation until April 01, 2010.

The tenant seeks the return of her personal belongings. She seeks an Order for the landlord to return her family heirloom jewellery such as wedding necklaces, gold necklaces, chains, bangles and an assortment of rings. The tenant testifies that she recently had an estimate of her jewellery conducted and it was determined its worth was \$16,900.00. The tenant also seeks the return of her personal documents and papers, her clothing and her medical equipment which would cost \$500.00 to replace at today's prices.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of the tenant. In the absence of any evidence from the landlord who did not appear at the hearing

despite notice to do so; I find there was a tenancy in place and a different arrangement had been entered into with the tenant and the landlord to the previous arrangement. With this agreement the tenant would no longer have access to the upper portion of the house, but would have exclusive possession of the basement suite and would pay rent to the landlord of \$1,000.00 each month. Letters presented by the tenant in evidence show that the landlord agreed to this arrangement and also agreed that she would remove her belongings from the basement suite. This agreement was based on a business arrangement and set up as a tenancy which would be governed under the *Act*. The tenant has also included in evidence a letter from the landlords' son which states she is a "respectful and helpful tenant". Consequently I find the tenant has provided sufficient evidence to establish that a tenancy agreement was in place.

I find the landlord did change the locks of the tenants' suite and prevented her access to her suite. The landlord has breached section 30 and 31 of the *Act* by restricting the tenants' access to her suite and by changing the locks and not providing the tenant with a new key. I also find the landlord did not provide the tenant with a proper notice to end the tenancy and as such the landlord breached section 44 of the *Act* which says; A tenancy ends only if one or more of the following applies: a) the tenant or landlord give notice to end the tenancy in accordance with one of the following sections 45, 46, 47, 48, 49, 49.1, 50 of the *Act* (my interpretation). By changing the locks and effectively ending the tenancy the landlord has prevented the tenant from retrieving her personal belongs.

Consequently I find the tenant has established her claim under section 65(e) of the *Act* and an Order has been issued to the tenant to serve on the landlord that any personal property seized or received by a landlord contrary to this *Act* or a tenancy agreement must be returned to the tenant.

Conclusion

I HEREBY FIND in favor of the tenants' application. An Order has been issued for the landlord to return the tenants personal belongings within **one month** of receiving the Order.

If the landlord does not comply with this order within **one month** the tenants' monetary claim will be considered at the reconvened hearing to be held on June 30, 2010.

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: April 29, 2010.

Dispute Resolution Officer