



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD, RPP, FF

Introduction

This matter dealt with an application by the tenant for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order for the return of her security deposit, an Order for the return of her personal property and to recover the filing fee for this application.

I accept the landlord was served with the hearing documents in accordance with section 89 of the *Act*. Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
Is the tenant entitled to the return of her security deposit?
Is the tenant entitled to an Order for the landlord to return her personal property?

Background and Evidence

Both parties agree that this month to month tenancy started in September, 2009 and ended on December 05, 2010. Rent for this unit in a four-plex building was \$950.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$475.00 at the start of her tenancy.

The tenant states that her tenancy ended on December 05, 2010. The next day she went back to clean the unit, and to meet Molly Maid cleaners there. On her way to the unit she received a call from the landlords' agent who informed her she could not return to the property under any circumstances. The tenant states she told the agent he could not prevent her from returning to the unit to clean and pick up the remainder of her property. She states the agent told her he could prevent her as she had been evicted. She states he also told her to just leave the key and garage remote in the mailbox and he would collect them from there. She states he also added that even if she did clean she would not get back her security deposit.

The tenant states she did as requested and did not enter the property. She claims the landlord therefore prevented her from completing a final clean of the unit and collecting the food in the fridge to a value of \$75.00, her cleaning materials to a value of \$25.00 to \$30.00 and her vacuum to a value of \$150.00.

The tenant states she sent the landlord her forwarding address by a text message and states he returned \$83.00 to her from her security deposit. She claims the landlord has retained the remainder of her deposit and alleges it is for damage to the rental unit. The tenant states she has received many threatening and harassing phone calls from the landlord and his agent since she moved out.

The tenant seeks a monetary Order for the loss of food and cleaning materials and an Order for the return of her vacuum cleaner. The tenant also requests an Order for the landlord to return the balance of her security deposit.

The landlord does not dispute the tenants' claims and states he still has her vacuum cleaner and will arrange a time to either deliver it to the tenant or for her to collect it. The documentary evidence shows that the landlord withheld the tenants' security deposit to cover cleaning costs for the unit and carpet to a sum of \$392.00 and he returned the remainder of \$83.00 by cheque dated December, 23, 2010.



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Analysis

When a tenancy ends a landlord must provide a tenant with opportunity to clean the rental unit at the end of the tenancy. As the tenancy ended on December 05, 2010 the landlord is under no obligation to allow a tenant to return to the property to clean it after this date as the tenant is responsible to ensure it was cleaned on the day she vacated.

A landlord must not dispose of a tenants belongings without complying with section 25 (1)(a) of the Residential Tenancy Regulations which states a landlord must store the tenants personal belongings in a safe manner for a period of not less than 60 days following the date of removal. However, section 25(2) states a landlord may dispose of the property if he reasonably believes that it has a market value of less than \$500.00, the cost of removing, storing for selling would be more than the proceeds of the sale or the storage of the property would be unsanitary or unsafe.

As the items left by the tenant had values of less than \$500.00 and it would be unsanitary to store food items I find the landlord was entitled to dispose of them. However, as the landlord agrees he still has the tenants' vacuum cleaner I Order that this be returned to the tenant at a mutually agreed date and time not exceeding 14 days from the date this decision is received. Consequently, the tenants request for a Monetary Order for the value of the food, cleaning materials and her vacuum is dismissed.

With regard to the tenants claim for the return of the balance of her security deposit; S. 38(1) of the *Act* says that a landlord (or the person acting as his agent) has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution.

The tenant argues that she gave her address to the landlord by text message and on her application for dispute resolution. However, a text message is not considered the correct way to give a forwarding address in writing and the address on the application is classed as an address for service and not necessarily a forwarding address. As the tenant has declared during the



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hearing that the address on her application is her forwarding address I will accept that the landlord has received the tenants forwarding address in writing as from today's date. Therefore, the landlord has until January 26, 2011 to either return the tenants' security deposit or make a claim to keep it pursuant to section 38(1) of the Act. Consequently, the tenant is not entitled, at this time, to the return of the balance of her security deposit.

As the tenant has been partially successful with her claim I find she is entitled to recover half her filing fee to the sum of **\$25.00** from the landlord pursuant to section 72(1) of the Act.

Conclusion

I ORDER the landlord to return the tenants vacuum cleaner at a mutually convenient date and time not exceeding 14 days from the date this decision is received.

The tenants' application for a Monetary Order is dismissed without leave to reapply.

The tenants' application for the return of her security deposit is dismissed with 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: January 13, 2011.
