



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD RPP

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of double her security deposit and for the return of her personal property.

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 November 10, 2011. Mail receipt numbers were provided in the Tenant's verbal testimony (79 620 339 664). Based on the submissions of the Tenant, I find the Landlord was sufficiently served notice of this proceeding in accordance with the *Act*.

The Tenant and her Advocate appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of double her security deposit pursuant to sections 38 and 67 of the *Residential Tenancy Act*?
2. Is the Tenant entitled to an Order for the return of her personal property pursuant to section 65 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant affirmed that she entered into a tenancy agreement with the Landlord for her to rent the upper floor suite with her son that began on July 1, 2011. The Landlord resided in the self contained basement suite while in town which had a separate entrance, kitchen, bathroom, and bedroom. Rent was payable on the first of each month in the amount of \$520.00 and she paid a security deposit of \$260.00 on October 12, 2011.

The Tenant stated that sometime towards the end of September 2011 her seventeen year old son woke one evening to find the Landlord in their living room, intoxicated and attempting to cook a steak in their fireplace. Then near the beginning of October 2011 the Tenant had to confront the Landlord because he locked her scooter away. After confronting the Landlord the Tenant said the Landlord became hard to deal with and he demanded that she pay a security deposit which she was able to obtain through Income Assistance, as supported by her evidence. She advised that when the Landlord was drinking it was near impossible for her to deal with him.

The Tenant advised that on October 23, 2011 at approximately 10:15 p.m. she saw the Landlord outside stumbling and banging stuff around. She could see that he was intoxicated so she gathered her shoes in attempts to vacate the property but he came smashing through the front door. She was able to get away and call 911. The Police attended and arrested the Landlord. The Tenant advised that she was moved to transitional housing and attempted to return to pick up her possessions on October 31, 2011, however her friends who were scheduled to help her move did not show up on that day.

When she attended during the first week of November, 2011 to remove some of her possessions, she found that the door had been repaired, the locks were changed, and the November 4, 2011 letter issued from the Landlord, as provided in her evidence, was nailed to the door.

The Tenant advised that she was granted access to the unit on November 17, 2011 when her son and two of his friends helped her load up her possessions. The police were called during her moving out and four police vehicles attended. She was able to move out most of her possessions however there were some items she could not find inside the rental unit that she would like returned. Following is a list of items she is seeking to be returned:

- Knives she had acquired during her attendance at cooking school
- Cutlery, silver
- Kitchen utensils
- Pots and Pans
- An extension cord
- A few wall hangings

The Tenant stated that during her haste in packing up her belongings they accidentally took two drawers from the Landlord's dresser that was stored in the closet. One had a

broken piece of wood inside it and a wheel off of the dresser. She would like to be able to return these two items to the Landlord.

She is also seeking the return of her security deposit and advised that the only time she provided her forwarding address to the Landlord was when it was written on her application for dispute resolution. She did however provide a fax number to him so he knew how to get in touch with her.

Analysis

Given the evidence before me, which included among other things as copy of the Shelter Information Form signed by the Landlord and the agreement to repay, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her evidence.

Section 65 (1) (e) of the Act provides that without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned.

The evidence before me describes what I find to be an egregious breach of the Act by the Landlord. The Landlord attended the rental unit, kicked down the door causing the Tenant to flee, seizing possession of the rental unit and the Tenant's personal property in breach of section 28(c) of the Act; entered a rental unit in breach of section 29(d) of the Act; and changed the locks to the rental unit without providing the Tenant with a copy of the key in breach of section 31(1) of the Act, these matters were not disputed.

Based on the aforementioned, I HEREBY ORDER the Landlord to return all of the Tenant's personal possessions, no later than December 19, 2011, including her Knives she had acquired during her attendance at cooking school; Cutlery, silver; Kitchen utensils; Pots and Pans; an extension cord; and a few wall hangings

The tenant has applied for the return of double the security deposit; however the tenant has not met the burden of proving that she gave the landlord(s) a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for dispute resolution.

Therefore in the absence of proof that a forwarding address in writing was given to the Landlord prior to this application, it is my finding that, at the time that the Tenant applied for dispute resolution, the Landlord was under no obligation to return the security deposit and therefore this application is premature. I therefore dismiss this claim with leave to re-apply.

At the hearing the Tenant stated that the address on the application for dispute resolution is the present forwarding address; therefore I find the Landlord is now considered to have received the forwarding address in writing as of December 6, 2011. The Landlord is Ordered to disburse any deposits held in trust in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY DISMISS the Tenant's application for the return of her security deposit, with leave to reapply.

The Landlord is HEREBY ORDERED to return the Tenant's personal property no later than December 19, 2011.

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: December 07, 2011.

Residential Tenancy Branch