Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTHERN PROPERTIES REIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, AAT, MNS, O, RPP

Introduction

The tenants apply for recovery of personal property or for compensation for its loss. They also seek return of a security deposit and damages claiming to have been wrongfully locked out of the rental unit.

At hearing it was agreed that on Monday, October 30, 2017 the tenants may attend between one and two o'clock in the afternoon to retrieve personal possessions. The landlord will have an employee available between those hours to let the tenants in and out. The tenants are free to re-apply to recover personal property or its value if any dispute arises about the retrieval.

All parties attended the hearing, the landlord by its representative, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Were the tenants wrongfully excluded from the rental unit and if so, what if any damages have resulted? Are the tenants entitled to recover a security deposit?

Background and Evidence

The rental unit is a two bedroom apartment in a four floor, 35 unit apartment building.

The tenancy started in September 2012. The monthly rent was initially $1295.00 per month but reduced to $995.00. The landlord holds a $625.00 security deposit.

Since 2012 the parties have had a series of fixed term tenancy agreements as well as an interlude of a month to month arrangement. The most recent written tenancy agreement indicates that the term of the tenancy is for one year ending July 31. 2017 and that the tenants must vacate the rental unit at the end of the term.

Between June 30 and mid-July it became clear to the tenants that the landlord did not intend to renew the tenancy. The landlord sent the tenants a notice of entry for a "pre-move out inspection" and a notice of final opportunity to conduct a move-out inspection on July 31. Neither tenant attended for that inspection.

On July 31 in the afternoon, the landlord changed the door lock. Neither tenant was home and neither was given a key. It appears that the tenants were given an opportunity afterwards to enter and retrieve personal belongings.

Mr. J.F. testified that he retrieved most of his belongings. He had thought that the landlord would renew the tenancy again after July.

Mr. H.T. says that all his clothes and food were left at the rental unit. He says that in the following days the landlord permitted him back to retrieve items but without a truck he could not get all his belongings out. He is a diabetic and his medication was in the rental unit. He says he had to eat junk food after he was locked out, which is not conducive to his medical condition. He says that over the next while he lived with friends and lived "outside."

The tenants say they were under the impression that because they had made an application for dispute resolution, the landlord could not evict them until the hearing in October. It should be noted that by the terms of the tenancy agreement the tenancy ended July 31, 2017 and that the tenants' application was not made unit August 4, 2017.

Ms. S. for the landlord testifies the tenants had received two notices to enter and inspect as well as the notice of final opportunity to attend the move out inspection. She claims that when the landlord entered on July 31 and changed the locks, the tenants had by then abandoned the premises. She says she's been trying to get them to come and get their belongings since.

Analysis

The tenancy agreement makes it clear that the tenancy ended July 31, 2017 and that the tenants would have to move out then. A tenant cannot simply expect a renewal of such an agreement.

The landlord's entry to the premises on July 31 was a lawful entry given with proper notice.

The landlord's change of the locks without providing a key to the tenants was not lawful. Section 57(2) of the *Residential Tenancy Act* (the "*Act*") provides:

> (2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

The act of entry, changing locks and thus barring a tenant's access is the taking of possession.

In this case I find it would have been apparent that the tenants had not abandoned the premises. Significant personal possessions were still there. If there had been any doubt about it the landlord's representative could simply have telephoned either tenant to confirm the tenants were not returning.

The landlord breached s. 57(2) of the *Act* and therefore breached the tenancy agreement.

I am satisfied that the tenants suffered inconvenience and loss as a result. They were both immediately homeless. However, the evidence of loss by either tenant was skimpy at best. No receipts were offered. No out of pocket expenses particularized. No inventory was given of food or clothing left behind.

The lack of evidence of loss does not bar recovery. The tenants are entitled to at least nominal damages for the landlord's breach. Having regard to the circumstances and to the fact that had the tenants remained in the rental unit past July 31, they would have been accountable for occupation rent, I consider $300.00 to be an appropriate award.

The tenants also seek recovery of the $625.00 security deposit. As of the start of this hearing on October 26, the tenants had not provided the landlord with a proper

forwarding address in writing. The address given for the tenants in their application is the address of the rental unit.

The tenants provided a forwarding address to the landlord at this hearing. I have noted it on the cover page of this decision. They say they provided it earlier by email but that seems to be in dispute. A landlord is not obliged to account to a tenant for deposit money until receipt of that forwarding address. After receipt a landlord has 15 days to repay the deposit money or make an application to keep it. If a landlord fails to do either it is penalized by having to account to the tenant for double the deposit (s. 38 of the *Act*).

And so in this case, the 15 day period started October 26. If the landlord fails to repay or apply, the tenants are at liberty to re-apply and to seek double the deposit money.

Conclusion

The tenants are awarded nominal damages of $300.00 plus recovery of the $100.00 filing fee. They will have a monetary order against the landlord in the amount of $400.00.

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: November 01, 2017

Residential Tenancy Branch