



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC LRE

Introduction

This hearing was convened pursuant to an Application for Dispute Resolution made by the Tenant on August 8, 2019, and amended on August 9, 2019 (the “Application”). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the “Act”):

- a monetary order for monetary loss or other money owed; and
- an order setting or suspending conditions on the Landlord’s right to enter the rental unit.

The Tenant attended the hearing and was assisted by C.K., an advocate. The Landlord attended the hearing. All in attendance provided a solemn affirmation testimony.

The Tenant testified the Landlord was served with the Application package and amendment by leaving a copy at the Landlord’s door. Although not served in accordance with section 89 of the *Act*, the Landlord acknowledged receipt. Further, the Landlord testified the documentary evidence he intended to rely upon was served on the Tenant in person on August 16, 2019. The Tenant acknowledged receipt. The parties were in attendance and were prepared to proceed. No issues were raised with respect to service or receipt of the above documents. Therefore, pursuant to section 71 of the *Act*, I find the Application package and amendment were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for monetary loss or other money owed?
2. Is the Tenant entitled to setting or suspending conditions on the Landlord's right to enter the rental unit or site?

Background and Evidence

The Tenant claims \$115.67 for various items she testified were stolen by the Landlord between April 8 and 12, 2019. She also requested an order setting or suspending conditions on the Landlord's right to enter the rental unit.

As set out in a written statement submitted into evidence, the Tenant testified she advised the Landlord she would be away from April 8 to 12, 2019. Further, the Tenant testified that on April 20, 2019, more than a week after she returned to the rental unit, she started to complete an inventory of her jewellery. At that time, she discovered that a number of jewellery items and 2 Elvis Presley champagne flutes were missing. In support of the value of the Tenant's alleged loss, she submitted eBay screen prints depicting various jewelry items she purchased through that site. The Item Price redacted and a hand-written value inserted.

The Tenant accuses the Landlord of stealing the above items. She testified that the Landlord appeared agitated when the R.C.M.P. was contacted. The Tenant testified to her belief that it must have been the Landlord, and that she knows when the Landlord is lying based on his body language.

In reply, the Landlord denied he entered the Tenant's rental unit while she was away. He also denied stealing the Tenant's belongings. The Landlord stated he has 5 years of experience and always gives written notice to enter tenant's units.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

With respect to the Tenant's request for a monetary order for monetary loss or other money owed, section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

In this case, I find there is insufficient evidence before me to grant the relief sought. Specifically, I find there is insufficient evidence that the Landlord breached the *Act* or the tenancy agreement, or stole the items described by the Tenant. The Tenant's allegations appear to be based primarily on the Landlord's knowledge that the Tenant was away for a period, and the Tenant's belief in her own ability to assess guilt based on body language. The Tenant's allegations were not supported by eyewitness testimony or other corroborating evidence. This aspect of the Application is dismissed.

With respect to the Tenant's request for an order setting or suspending conditions on the Landlord's right to enter the rental unit, section 29 of the *Act* confirms that a landlord must not enter a rental unit for any purpose unless the tenant gives permission at the time of the entry, the landlord gives the tenant at least 24 hours but not more than 30 days written notice, the landlord provides housekeeping or related services, the landlord has an order of the director authorizing the entry, the tenant has abandoned the rental unit, or an emergency exists and the entry is necessary to protect life or property.

In this case, I find there is insufficient evidence to grant the relief sought. As noted above, the Tenant did not provide eyewitness testimony or other corroborating evidence in support of her allegation that the Landlord entered her rental unit while she was away. Further, in response to the Tenant's allegation, the Landlord testified that he did not enter the rental until while the Tenant was away and did not steal her belongings. This aspect of the Application is dismissed, although I note that all landlords have an obligation to access a tenant's rental unit only in accordance with section 29 of the *Act*.

Conclusion

The Application is dismissed, 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 *Residential Tenancy Act*.

Dated: August 26, 2019

Residential Tenancy Branch