Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP, OPT, AAT, MND, MNR, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- an Order of Possession of the rental unit pursuant to section 54; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to ask questions of one another and the witnesses who gave sworn testimony.

Preliminary Matters

At the commencement of the May 3, 2013 hearing (the original hearing), I clarified that the spelling of the landlord's name was as set out above rather than the version identified in the tenant's application for dispute resolution. At the June 6, 2013 reconvened hearing (the reconvened hearing), the parties agreed to the revised spelling of the tenant's middle name as appears above. I revised the names to those which appear above.

At the original hearing, the tenant testified that on April 6, 2013, he sent the landlord a copy of his dispute resolution hearing package by registered mail. Although the landlord's name was misspelled on the registered mail, the landlord confirmed that she did receive the tenant's package. I am satisfied that the tenant served his hearing package to the landlord in accordance with the *Act*.

At the original hearing, the agent made an oral request for an adjournment of these applications as the landlord's attempt to serve the tenant with her dispute resolution hearing package had proven unsuccessful. As reported in my Interim Decision of May 6, 2013, I granted an adjournment because of problems at the original hearing with respect to the service of documents by the parties. The landlord's agent (the agent) and the landlord testified that the landlord sent her dispute resolution hearing package to the tenant by registered mail on April 26, 2013. He and the landlord gave sworn testimony that the landlord's dispute resolution hearing package had been returned by Canada Post on April 29, 2013. They testified that the package was returned because Canada Post advised them that the mailing address provided to them by the tenant did not exist.

The tenant and the advocate who attended the original hearing with him (the original advocate) said that they had not received the landlord's hearing package and were unaware that the landlord had submitted a cross-application that was scheduled for consideration at this hearing. The tenant and his original advocate said that the tenant's application for dispute resolution identified the dispute address as his mailing address because he was hoping to return to that address if his application for dispute resolution had proven successful. The tenant testified that he was coming back to the rental unit to check for his mail frequently. The agent said that the landlord sent her dispute resolution hearing package to another address for the tenant provided by the tenant's agent in the tenant's written evidence package. The tenant's original advocate said that he had misread the tenant's address when he included that information in the tenant's written evidence package. The tenant's original advocate said that he had erred in providing this incorrect mailing address to the landlord.

At the reconvened June 6, 2013 hearing of these applications (the reconvened hearing), both parties confirmed that they had received one another's dispute resolution hearing packages and written evidence packages. A recently appointed new advocate for the tenant (the current advocate) confirmed that the tenant had received a copy of the landlord's dispute resolution hearing package including notification of this reconvened hearing sent by the landlord by registered mail.

During the reconvened hearing, the tenant had to be reminded frequently to refrain from interrupting the proceedings and interjecting his comments and observations while others were speaking. On several occasions, I asked the tenant to clarify whether he wished to proceed with the assistance of his current advocate or whether he wished to look after this matter himself. If he were to remain represented by his advocate, I requested that he allow his current advocate to provide that representation without further interference to the overall proceedings. Although the tenant had some difficulty in refraining from interjecting his comments, the current advocate was able to represent the tenant's interests in this matter at the reconvened hearing.

During the course of the reconvened hearing, the tenant and his current advocate referred to three receipts that the tenant maintained demonstrated that he had incurred costs arising out of the landlord's actions. Neither the landlord nor the RTB had received copies of these receipts from the tenant, his original advocate or his current advocate. The tenant said that his original advocate was supposed to have submitted this written evidence to both the landlord and the RTB, but did not appear to have done so. The current advocate requested an opportunity to either submit these receipts after the reconvened hearing or to adjourn the reconvened hearing again so that the landlord and the RTB could receive copies of this evidence.

The landlord was unwilling to agree to this very late adjournment request. I noted that this matter had already been delayed once and both parties were claiming significant monetary awards against one another. Both parties had been granted an additional month to send one another and the RTB any written evidence that they deemed necessary. In my Interim Decision, I had specifically ordered the parties to deliver whatever additional documentary evidence they wished to have considered in advance of this reconvened hearing. Under the circumstances and after having regard to the Rule 6.4 of the RTB's Rules of Procedure, I denied the current advocate's request for a second adjournment of these proceedings and continued with the reconvened hearing. In coming to this conclusion, I found that the parties had both had ample opportunity to submit whatever evidence they considered necessary to consider their applications and their positions with respect to the applications submitted by the other party.

Issues(s) to be Decided

Is the tenant entitled to a monetary Order for losses or damage arising out of this tenancy? Should any other Orders be issued against the landlord? Is the landlord entitled to a monetary Order for unpaid rent, losses or damage arising out of this tenancy? Is the landlord entitled to retain the tenant's security deposit? Is the landlord entitled to recover her filing fee for her application from the tenant?

Background and Evidence

The landlord testified that this periodic tenancy for one basement rental unit in a three-unit property began on or about September 1, 2012. The tenant testified that he did not move into the rental unit until November 1, 2012. There is one other basement rental unit in this property; the landlord lives on the main floor of this building. Monthly rent by the end of this tenancy was set at $475.00, payable in advance on the first of each month. The landlord testified that she continues to hold a $225.00 security deposit for this tenancy paid on or about September 1, 2012.

The landlord confirmed that no joint move-in condition inspection was conducted at the beginning of this tenancy. The landlord said that she conducted her own move-out condition inspection of the tenant's rental room after this tenancy ended. However, she did not provide the tenant with any move-out condition inspection report.

The parties gave conflicting evidence with respect to a Mutual Agreement to End a Tenancy entered into written evidence by the landlord. The landlord maintained that on February 27, 2013, both she and the tenant signed this mutual agreement to end this tenancy by 12:00 p.m. on March 31st, 2013. She testified that her brother, SB, witnessed both parties sign this agreement.

During the reconvened hearing, Witness SB gave sworn testimony that on February 27, 2013, he witnessed the tenant sign the mutual agreement to end this tenancy by March 31, 2013. In response to a question asked by the current advocate, Witness SB confirmed that he was the landlord's brother. He also explained that the landlord asked him to attend the February 27 meeting with the tenant because her husband was out of town and she found the tenant threatening and very difficult to deal with alone.

The tenant denied emphatically that he had signed the mutual agreement document submitted into written evidence by the landlord. He noted that the spelling of his second name was incorrect on the typed portion of this agreement. He said that he would never have signed such a document without the correct spelling of his name on the document. He also gave sworn testimony that his signature had been forged on this document. He asked that a forensic handwriting expert be retained to examine the authenticity of his signature on this document. I asked if the tenant was prepared to incur the costs of this expert evidence. As he was not prepared to pay for these costs, I proceeded with this hearing.

The tenant's original application sought an order allowing him to return to the rental unit as well as a return of personal property that he maintained went missing after the landlord locked him out of his rental unit. The tenant and his current advocate

maintained that the tenant suddenly became homeless without any notice from the landlord. The tenant testified that he was current with his monthly rent when the landlord locked him out of his basement rental unit and had already paid his rent for April 2013. He said that he frequently asked the landlord for rent receipts but she refused to issue them. He testified that he was left homeless and lived on the street for a few weeks until he was able to obtain another place to live.

The tenant's application for a monetary award of $8,000.00 was for his loss of items that he maintained the landlord seized at the end of his tenancy. The tenant's original advocate and the tenant entered into written evidence an April 24, 2013 Itemized cost breakdown of 36 items the tenant claimed went missing or were taken by the landlord at the end of this tenancy. He provided an estimate of both the "Cost New" of these items which totalled $10,540.00, and a 'Replacement Cost" value of $7,535.00 for these items. Included in this list was a new 51 inch television, another 32 inch television, various sound and video equipment, a bed and bedding, clothes, personal items (including tattoo equipment), and other items he identified as priceless. The tenant provided no photographs or receipts for any of these items. His only evidence in this regard was his own handwritten statement on a memo pad, which he claimed included the invoice numbers for his purchase of the two televisions and a mattress and boxspring. Both he and his current advocate said that these invoice numbers matched with the receipts the tenant had not entered into written evidence.

The landlord's application for a monetary award of $3,095.47 included a request for unpaid rent of $475.00 for the four months from December 2012 until March 2013, a total of $1,900.00. The tenant testified that he paid rent for each of these months as well as April 2013, but the landlord did not issue him any receipt. The tenant's current advocate questioned why the landlord had not issued any notices to end tenancy if the tenant had not paid any rent or his pay per view movie charges since December 2012. The landlord said that she found the tenant intimidating and that the landlord favoured trying to end this tenancy by a mutual end to tenancy agreement in which the tenant was to vacate the premises by March 31, 2013.

The landlord also claimed for $775.47 in pay per view movies that the tenant had ordered from Shaw Cable and were billed to the landlord. The landlord said that there are three separate living units in this rental house and the landlord receives one cable bill for the premises. She testified that Shaw Cable had told her that each cable box has a specific number and Shaw Cable had confirmed that the pay per view movies had in fact been charged by the tenant on his cable box number.

The landlord also claimed $420.00 to clean the rental unit at the end of this tenancy. She supplied an April 3, 2013 receipt from a cleaning and carpet cleaning company. The tenant's current advocate questioned the size of this bill for the cleaning of a small one bedroom basement rental unit.

The landlord maintained that the tenancy ended by March 31, 2013, as per the terms of the Mutual End to Tenancy Agreement signed by both parties. She said that an argument occurred with the tenant and the police were called. The landlord and the landlord's brother said that she believed that the tenant cleared out the contents of the rental unit and abandoned the premises in accordance with the Mutual End to Tenancy Agreement. By April 1, 2013, her realtor (Witness CS), who was showing the house to prospective purchasers, noticed that the basement door was open and all of the tenant's belongings had been removed. The landlord entered into written evidence a copy of her realtor's note describing the above circumstances at the end of this tenancy, also noting that the rental unit had not been cleaned.

At the reconvened hearing, Witness CS gave sworn testimony to confirm the accuracy of the written account entered into written evidence by the landlord. He testified that the rental premises were empty by the morning of April 1, 2013 and needed cleaning.

The landlord also entered into written evidence a letter from the other basement tenant in this rental building. He stated that from the March 2013 until April 2013 period he "did not see any big furniture being taken out from the next door tenancy suite either by the Landlord or by the tenant himself."

The landlord testified that the tenant did not bring many belongings to this one bedroom rental unit. She said that at the commencement of this tenancy he and his female friend brought three large bags of belongings to the rental unit. She said that the tenant's female friend left the rental unit shortly after the tenancy began and took two of the bags with her. The landlord claimed that the tenant had almost nothing in his rental unit. She said that he had a small 16 inch television that sat on a box and he had no mattress. Despite this testimony, she confirmed that she had not actually entered the tenant's rental room for some time during this tenancy, but limited her observations to what was visible from the entrance door to his room.

Analysis - General Remarks

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Before turning to my consideration of the specific claims initiated by the parties, I will first provide general remarks on the evidence and general findings as to the circumstances surrounding the end to this tenancy which affect both sets of claims.

I would first like to review the scarcity of hard evidence provided by both parties to support their respective significant monetary claims.

The landlord has claimed unpaid rent for a four-month period, but admitted that she was not issuing rent receipts to the tenant, nor had she issued any 10 Day Notices to End Tenancy for Unpaid Rent (10 Day Notices) to try to end this tenancy for unpaid rent. She did not create a Residential Tenancy Agreement for this tenancy. The landlord did not conduct a joint move-in condition inspection nor did she produce a move-out condition inspection report of her own inspection of the rental unit at the end of this tenancy, both of which are necessary under the *Act* to claim against a tenant's security deposit. The landlord has not provided convincing evidence to substantiate her claim for $775.47 in pay per view television that she claims were attributable to the tenant, but which were logged onto one cable television bill for this entire rental house, which included two basement rental units and the landlord's own premises on the main floor. Although the landlord may very well be correct in her claim that the tenant incurred these expenses, the absence of any additional evidence from Shaw Cable or with respect to the cable television arrangements for this tenancy make it difficult to assess whether this portion of the landlord's claim even falls within the *Act*.

I find that the tenant's application for an even larger monetary award than that requested by the landlord is supported by even less information. While the tenant has provided his own list of items he claimed were lost as a result of the landlord's alleged failure to safeguard his belongings, I find very little documented evidence that would suggest that many of these items ever entered his rental unit. Even if some of these items were present when the tenant left the rental unit, it is also possible that the tenant returned to remove anything of value before the landlord's realtor noticed the premises open and vacant on the morning of April 1, 2013. I can appreciate that if the tenant's account of what transpired was correct he may not have bills, invoices, receipts or photographs to confirm the extent of his losses. However, I would expect him to be able to provide some form of evidence, either through photographs, witness statements or duplicate bills recovered from vendors to show that he did in fact possess the items he

claimed were present in his basement rental room at the time this tenancy ended. I find that the tenant's failure to provide any evidence other than his own sworn testimony calls into serious question the validity of his claim.

On a balance of probabilities, I find it more likely than not that the parties did enter into a signed Mutual Agreement to End a Tenancy signed on February 27, 2013 in which both parties agreed to end this tenancy by March 31, 2013. While I have given the tenant's claim that he did not sign this Agreement to end this tenancy and that his signature was forged due consideration, I find little evidence to suggest that this was so. I disagree with the tenant's assertion that the misspelling of his middle name on a pre-arranged typed document prepared by the landlord in advance of their signing this document is evidence that the tenant would not have signed this Agreement. The landlord provided a witness who gave sworn testimony that he was in attendance at the signing of this Agreement. This witness, the landlord's brother, also submitted a written statement attesting to his witnessing of the signing of this document by the tenant. In addition, I find that the existence of this Agreement may have influenced the landlord's failure to take action to end this tenancy by way of a 10 Day Notice. The landlord's anticipated reliance on this Agreement is also consistent with the timing of the eventual altercation that led to the attendance by police at this rental unit when it became apparent that the tenant might not leave the rental property in accordance with the Agreement.

Based on my finding that the tenancy was scheduled to end on March 31, 2013 in accordance with the signed Mutual Agreement to End a Tenancy, I find it reasonable that the landlords would have assumed that the tenant had cleared his room of those belongings he wished to keep by the time the landlord's realtor noticed the door to the rental unit open and his belongings gone on the morning of April 1, 2013. Although the landlord had no Order of Possession at that time, none would have been necessary for the landlord to take occupancy in the event that the premises were considered abandoned and in accordance with the Mutual Agreement to End a Tenancy the parties signed. Under these circumstances, I find the landlord was authorized to change the locks to the rental unit and take into safekeeping anything of value that remained from this tenancy.

Analysis- Landlords' Application

Based on the evidence presented by the landlord and her agent, I am not satisfied that the landlord has demonstrated her entitlement to a monetary award for unpaid rent from December 2012 until March 2013. The landlord produced no tenant rent ledger, no copies of receipts for payments made during this tenancy, or any other substantive and documented way of ascertaining her entitlement to unpaid rent during this tenancy. As a landlord seeking a monetary award for unpaid rent, she has provided only sworn

testimony, disputed by the tenant as to her claim for unpaid rent. Her failure to issue any 10 Day Notices to the tenant or submit any written documents requesting his payment of outstanding rent does not support her claim for unpaid rent owing from this tenancy. I dismiss the landlord's application for a monetary award for unpaid rent without leave to reapply.

I also find that the landlord's claim for a monetary award for the recovery of pay per view television charges allegedly incurred by the tenant has not been substantiated to the extent required to lead to the issuance of a monetary award in the landlord's favour for this item. In reaching this conclusion, I find that the pay per view bills submitted by the landlord could have been incurred by the other tenant in this rental home or by the landlord. Evidence could have been obtained from the cable television provider to substantiate the landlord's claim that the tenant's cable box was in fact the source of the pay per view movies. The landlord did not choose to obtain anything in writing with respect to this portion of her claim other than the cable bill for her whole property. Without such written evidence, that clearly could have been made available for this hearing, I do not find that the landlord has demonstrated that it was the tenant who was responsible for these pay per view charges. The absence of a signed residential tenancy agreement clearly setting out responsibilities of the tenant and the landlord also detracts from this portion of the landlord's claim. I dismiss the landlord's claim for the recovery of pay per view charges incurred by the landlord allegedly arising out of this tenancy without leave to reapply.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. No joint move-in condition inspection was conducted for this tenancy and no condition inspection report was issued by the landlord and provided to the tenant at the end of this tenancy.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in condition inspection and move-out condition inspection report, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is limited. However, I also find on a balance of probabilities and based on the oral and written evidence of the parties that the tenant did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean" as cleaning was likely required by the landlord after this tenancy ended. I also agree with the tenant's current advocate that the amount of the cleaning bill submitted by the landlord seems unusually high for a small one bedroom basement rental unit. For that

reason, I find that the landlord is entitled to a monetary award of $320.00 for cleaning, carpet steaming and deodorizing at the end of this tenancy.

As the landlord has been partially successful with her application, I allow her to recover her $50.00 filing fee from the tenant.

Analysis – Tenant's Application

As noted earlier in this decision, I find that the landlord acted reasonably in assuming that the tenant had removed his possessions from the rental unit and yielded possession of the rental unit to the landlord in accordance with the Mutual Agreement to End a Tenancy that took effect on March 31, 2013. However, despite this finding, the landlord was still obligated under the *Act* to take care of any items of value that remained in the rental unit by the end of this tenancy or when possession of the premises transferred to the landlord.

The actual timing of the transfer of the possession of the rental unit to the landlord becomes important in this context. The landlord took possession on the basis of the tenant's abandonment of the rental unit and not on the basis of any Order of Possession obtained from an Arbitrator appointed under the *Act*. Although the tenant left the premises on March 31, 2013, the landlord did not become aware that the premises had actually been vacated until after 10:00 a.m. on April 1, 2013, and after the landlord's realtor notified the landlord. With the door of the rental unit open and testimony from the landlord and her realtor that items of value had been removed, presumably overnight by the tenant, the locks were changed on April 1, 2013.

Given the undisputed written evidence from the other tenant in the basement of this rental unit, it does not seem that anyone removed large items from the rental unit on the night of March 31, 2013 or very early on April 1, 2013.

For the reasons outlined earlier in this decision, I find that the tenant has supplied little documented evidence to support his claim for his losses arising out of this tenancy. I am not satisfied on the basis of the evidence before me that the tenant possessed the full range of items listed in the April 24, 2013 written submission. I am also not satisfied that he lost all of the items he has claimed, as it is very possible that either he or one of his associates removed some of his possessions from the rental unit either before the altercation with the landlord on March 31, 2013 or before the landlord's realtor came to the premises on April 1, 2013.

I do find that it more likely than not that the landlord did not take adequate care of at least some of the items the tenant left behind when care of the goods in the rental unit

transferred to the landlord. These items would likely include some of his clothing, personal items that the landlord considered garbage or debris, and kitchenware and utensils. I issue a somewhat nominal monetary award in the amount of $400.00 in the tenant's favour for these possessions that I believe were not properly cared for and safeguarded and were of value at the end of this tenancy. While I realize that this does not come close to the losses that the tenant claims to have encountered as a result of this tenancy, I find it likely that he did experience at least this amount of loss arising out of possessions that remained behind at the rental unit when the landlord changed locks and took possession of the premises.

I dismiss the remainder of the tenant's application without leave to reapply, including his claim at the reconvened hearing that he paid rent for April 2013, without having access to the rental unit for any portion of that month. I find that the tenant has produced little evidence to substantiate his claim that he is entitled to a monetary award for rent he paid for April 2013 in advance.

As the tenant's monetary award exceeds the amount provided to the landlord, I dismiss the landlord's application to retain the tenant's security deposit. I order the landlord to return the tenant's security deposit plus applicable interest. No interest is payable over this period.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the parties monetary awards for losses and damage arising out of this tenancy, the recovery of the landlord's filing fee and the return of the tenant's security deposit:

Item	**Amount**
Landlord's Claim for Damage -Cleaning	$320.00
Tenant's Claim for Losses Arising out of Tenancy	-400.00
Less Security Deposit	-225.00
Recovery of Part of Landlord's Filing Fee for this Application	50.00
Total Monetary Order	**($255.00)**

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: June 11, 2013

Residential Tenancy Branch