



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, MND, MNR, MNDC, MNDS, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act*.

The Tenant applied for:

1. A Monetary Order for compensation or loss - Section 67; and
2. An Order for the Landlord to comply with the Act – Section 62.

The Landlord applied for:

1. A Monetary Order for compensation or loss - Section 67;
2. A Monetary Order for damage to the unit - Section 67
3. A Monetary Order for unpaid rent or utilities - Section 67;
4. An Order to retain the security deposit – Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath. The Witness provided evidence under oath.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started on July 1, 2013. The Tenant lived in the upper part of the unit and the Tenant's mother lived in the lower part. Rent

of \$1,550.00 was payable monthly and at the outset of the tenancy the Landlord collected \$775.00 as a security deposit. No rent was paid for February 2014. The Landlord told the Tenant to be moved out of the unit by February 28, 2014 and that the Tenant told the Landlord that she would be moved out with cleaning completed by March 15, 2014. The only rent received for February 2014 was \$600.00 leaving \$950.00 owing. No rent was paid for March 2014.

The Landlord states on February 26, 2014 the Landlord attended the unit, found the back door open and entered to discover that the Tenants were "completely moved" with only garbage left. The Witness, who lives a few houses away from the rental unit states that truck loads of items were moved out of the unit on the weekends between February 1 and February 15, 2014. The Witness also stated that the regular school bus drop offs and parked vehicles were no longer seen at the unit.

The Landlord states that on March 1, 2014 a large bin was left outside of the unit. The Landlord states that he last spoke with the Tenant on March 4, 2014 who told him that they were already moved out of the unit. The Landlord states that on March 8, 2014 the Landlord was asked to open the unit for the SPCA as neighbours had reported cats left in the unit. The Landlord submits that on this date the Landlord believed the unit to be abandoned and proceeded to empty the unit of remaining items left by the Tenant. The Landlord states that he was informed that the gas to the unit had been discontinued by the Tenant on February 19, 2014. The Landlord states that there was only garbage inside the unit. The Landlord states that some throw-away furniture was left in the garage along with stacks of garbage bags with food items inside. The Landlord states that the unit was emptied into the bin and on the ground outside the unit. The Landlord states that no clothing or food was left in the unit. The Witness states that he assisted the Landlord with cleaning the unit and states that boxes, garbage and some throwaway furniture were left almost every room.

The Landlord states as a result the stacked garbage in the garage the unit was infested with rats with a rat nest found between the walls of the garage and unit. The Landlord

states that there were never any rats reported by previous tenants over the past 20 years. The Landlord claims the costs of cleaning the unit, removing the rats nest, treating the unit for rodents, repairing the walls on both sides and hauling the garbage.

The Landlord states that the Tenant left a damaged faucet and claims the cost of its replacement. The Landlord states that the faucet had a previous problem with leaking requiring repairs. The Landlord claims the costs to replace the furnace filters and to produce the photos provided as evidence for the claim.

The Landlord claims unpaid rent for February and March 2014 and lost rental income for April 2014.

The Tenant states that she was still living in the unit up to March 8, 2014 working day and night shifts and in the process of packing her belongings into boxes. It is noted that the Landlord provided a copy of a text between the Parties on March 4, 2014 and this message indicates that the Tenant told the Landlord again that the move-out would be complete on March 15, 2014. The Tenant states that she slept at the unit every night with the exception of a day or two. The Tenant states nothing, including food and clothing had been moved out of the unit. The Tenant states that when she arrived home from work on March 8, 2014 she found all of her belongings on the side of the road and in a garbage bin with the unit door locks changed. The Tenant states that the police were called. The Tenant states that she did not see the bin outside the unit until March 8, 2014. The Tenant states that all the furniture had been damaged by water from sitting outside at least overnight so she did not ask for their return. The Tenant states that she lost, among other items, her children's toys and gifts, a leather sectional couch, 52" flat screen TV, a gym set and bedroom furniture for three bedrooms including a newer large crib. The Tenant claims a global amount of \$10,000.00.

The Landlord agrees that he did throw out a lot of articles but that he still has the gym set. The Landlord states that the crib was old and broken and the mattresses were old. The Landlord states that the furniture that had been placed in the bin and on the street

came from the garage. The Landlord agrees that the Tenant can have her gym set back. The Witness states that there was no flat TV or leather couch in the unit. The Tenant states that the truck seen by the Witness might have been her mother's truck moving. The Tenant states that she does not know where her mother is or when her mother moved out of the unit. The Tenant indicates that she and her mother are not on speaking terms. Both Parties provided photos.

Analysis

Section 7 of the Act provides that where a tenant or landlord does not comply with the Act, regulation or tenancy agreement, the tenant or landlord must compensate the other for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Section 29 of the Act provides that a landlord may only enter a tenant's unit if, inter alia, the unit is abandoned, the landlord has an order authorizing the entry or if there is an emergency.

Section 24 of the Regulations provides as follows:

- (1) A landlord may consider that a tenant has abandoned personal property if
 - (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
 - (b) subject to subsection (2), the tenant leaves the personal property on residential property
 - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

Based on the undisputed evidence that the Landlord was told by the Tenant that she would be moved out of the unit by March 15, 2014, I find on a balance of probabilities that the unit was not abandoned on March 8, 2014 when the Landlord removed the Tenant's belongings. Considering that the Landlord did not have an order for entry into the unit and I do not consider open back door in the circumstances to be an emergency giving rise to a permitted entry by the Landlord, I find that the Tenant has established that the Landlord breached the act by entering and removing the Tenant's possessions causing the Tenant losses.

Although the Landlord stated that only the garage contained furniture, I note the Witness places some furniture in the unit. Although the Landlord and Witness described the furniture as "throw away", I have a difficult time accepting that used or old furniture is "throw away" furniture to a mother with children, whether being used or stored. As a result, and considering the photos of the furniture and items both in the bin and on the outside, I accept that the Tenant lost a significant amount of personal belongings. Although the Witness gave evidence of a truck moving prior to February 15, 2014, the Tenant's evidence that her mother may have been using this truck casts doubt on this evidence in relation to the Tenant's belongings. Given the photos and the Landlord and witness evidence however I accept that the furnishings lost were used and of limited value. I therefore limit the Tenant's entitlement to a nominal and global sum of

\$7,500.00. As the Landlord still has the gym equipment, I order the Landlord to return this set to the Tenant within two weeks of the date of this Decision. Should the Landlord fail to return this equipment, I given the Tenant leave to reapply for compensation on this item. As the Tenant has been substantially successful with her claim I find that the Tenant is entitled to recoveyr of the **\$100.00** filing fee for a total entileement of **\$7,600.00.**

Based on the undisputed evidence that rent for February 2014, accepting that the Tenant was in possession of the unit until March 8, 2014 I find that the Landlord is entitled to **\$950.00** in rent for February 2014 and, based on a per diem of \$50.00 (\$1,550.00/31 days), to **\$400.00** in rent for March 1 to 8, 2014 inclusive. As the Act does not provide for any costs associated with the dispute proceedings other than the filing fee, I dismiss the Landlord's claim for costs of the photos. As the Landlord provided no evidence that the Tenant caused the faucet to be damaged and considering the evidence of previous repairs for leaks, I find that the Landlord has not substantiated that the Tenant caused the faucet to require replacement and I dismiss this claim.

As the Landlord acted to stop the Tenant from completing her move out of the unit, including the cleanup of the garage, I find that the Landlord has not substantiated that the Tenant caused the Landlord's losses in relation to cleaning the unit, item removal, bin and car rental and dump cost. Given the undisputed evidence of long-term storage of garbage in the garage I find that the Tenant did fail to maintain the unit as required and caused the presence of the rats. However as the Landlord failed to provide the Tenant with the opportunity to leave the unit undamaged, I find that the Landlord may not now claim the costs to repair the damages and I dismiss the Landlord's claim to all costs incurred in relation to the rat infestation. For this reason I also dismiss the Landlord's claim to lost rental income for the remainder of March and April 2014. As the Landlord's application has met with limited success I decline to award recovery of the filing fee. Deducting the **\$750.00** security deposit plus zero interest from the Landlord's entitlement of **\$1,350.00** leaves **\$600.00** owed by the Tenant to the Landlord. I reduce

the Tenant's entitlement of **\$7,600.00** by this amount in full satisfaction of the Landlord's claim, leaving **\$7,000.00** owed by the Landlord to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$7,000.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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: August 15, 2014

Residential Tenancy Branch

