Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC OLC, RP, RPP, LRE, OPR, MNR, MNSD, ET, FF.

Introduction

In the first application, against one of the two landlords, the tenant seeks to cancel a ten day Notice to End Tenancy dated July 21, 2014, given for unpaid rent, compensation for work done and for loss of services and facilities and for various relief relating to repairs and landlord entry.

In the second application, the respondent landlord in the tenant's application seeks an order of possession, a monetary award for unpaid rent and to keep the security deposit and an early termination of the tenancy.

By the time of the first hearing of this matter on September 30th, the tenant had vacated and the landlords had regained possession. The issues involving the Notice, the tenant's request for repairs or restricting landlord access and the landlord's request for an order of possession are all redundant.

Also by the time of the first hearing the tenant had filed material to advance a claim for damages alleged to have arisen from events occurring after making his July 25, 2014 application. He claims additional compensation for a damaged building and boat, as well as loss of furniture, lumber and building supplies totalling $4905.53. The matter was adjourned from September 30th in part to assure the landlord an opportunity to provide competing evidence regarding that claim.

By the second hearing date October 22nd, the landlord had replied and, in addition, indicated an unrelated, competing claim for cleaning and repair in an amount exceeding the $25,000.00 jurisdiction of this tribunal. By my Interim Decision of October 22nd, I indicated that the landlord must make a formal claim for that relief and that it would not be considered as part of this dispute resolution. The landlord also sought to recover additional rent or loss of rental income for the months of August and September. As that is the same issue as raised in her original application, I allowed that amendment.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either party is entitled to any of the relief claimed?

Background and Evidence

The rental unit is a “single wide” manufactured home installed with a porch and a deck on a rural property. The property contains or contained various outbuildings including a “crap shack” structure 20’ x 20’ x 15’ in size, a small well pump house and a storage shed partially used to house various of the landlords’ property including a motorcycle.

The tenancy started in mid-December 2013. There is a handwritten tenancy agreement between the tenant Mr. J.W and Ms. A.C. and Mr. K.C. as landlords. It indicates the tenancy is for a fixed term to December 14, 2014 at a monthly rent of $950.00 due on the 15th of each month. It confirms a security deposit and pet damage deposit totalling $950.00. The tenant was responsible for utilities.

The landlord Ms. A.C. testified that the tenant has not paid rent since April 2014. She says the May rent was reduced by $500.00 to $450.00 to offset a repair the tenant conducted on a swing set on the property.

The tenant does not dispute that no rent money has changed hands since April but he argues that he provided services to the landlords that were to be offset against rent.

The tenant is a carpenter and construction contractor. He says that the landlord Mr. K.C. hired him to build a carport but cancelled the work after being caught building it without a required permit. He testified that he is owed $1200.00; $900.00 for material and $300.00 for his labour.

The tenant claims that the landlord Mr. K.C. hired him to enclose and electrically wire the back deck of the rental unit at a cost of $1000.00 in order to accommodate the landlords’ government or medically certified marijuana “grow operation.”

The tenant testified that the landlord Mr. K.C. had hired him to deconstruct a “chicken coop” for $500.00. I assume this to be the “crap shack” also referred to in this proceeding. He says the landlord Mr. K.C. agreed to remove the debris afterward.

The tenant testified that the landlords agreed to have him repair a swing set at a cost of $600.00 and that the landlord Mr. K.C. hired him to build a giant Adirondack chair at a cost of $800.00, as a surprise anniversary present for Ms. A.C.. The tenant still has the chair.

The tenant says that the agreement was that all this money would be taken off his rent. The landlord Ms. A.C. denied any agreements but for the swing set repair at a cost of $500.00.

According to Ms. A.C., the landlords were repeatedly contacting the tenant for rent after May. She says the tenant told them he was having money problems. It is agreed that a friend of the landlords attempted to hire the tenant to work on a bathroom remodelling. The tenant says he was fired from that job after his relationship with the landlords broke down. The landlord Ms. A.C. submitted a signed statement from the friend indicating that the tenant failed to show up to start the work for three straight days and so he found another contractor to do it.

Ms. A.C. says that June 15 h was set for the last day the landlords would wait for rent. On June 16 the tenant was given a handwritten 10 day demand for rent. It was not a Notice to End Tenancy in the form required by ss. 46 and 52 of the *Residential Tenancy Act* (the "*Act*"). The notice included a demand that the tenant deconstruct a plywood enclosure he had erected on the deck to the home.

On June 25th, in the "late evening" according to the statement of the landlord's witness Ms. C.B., Ms. A.C, while entertaining Ms. C.B. and her family, decided to go to the rental property to see if the tenant was deconstructing the back deck or moving out. It does not appear that she had permission to come onto the property nor did she contact the tenant beforehand. The tenant was not home. Ms. A.C. determined that the tenant had started taking the deck structure apart. She states she saw that the 20x20x15 building had been dismantled. I assume this to be the same building, the "crap shack" the dismantled remains of which the tenant had sent a picture of to the landlord Mr. K.C. in his communication of May 9, 2014. Ms. A.C. says she then entered another storage building with its door open and found a marijuana grow operation. She returned home and came back with her friend Ms. C.B., who took a video of the plants growing "under extremely bright lights and fans."

The next day Ms. C.B. gave the video to the RCMP and later that day the RCMP attended with a warrant and search the premises.

The tenant was charged by the police though he says the charges have been dropped. His version is that it was the landlords put the grow operation there, not him, for the purpose of filming it and reporting it to the police as his operation.

The landlord A.C. applied to the Residential Tenancy Branch for an early termination of the tenancy and an order of possession which ultimately failed after a hearing on July 14th (RTB file #252801).

It appears that on July 2nd both landlords attended the property for an inspection in the company of two peace officers. Ms. A.C. says they police removed two rifles for which the tenant had no permit. The tenant denied it during his evidence. She says that the tenant gave the landlords permission to return to the property over the next few days to clean it up. It appears that formal

written notice was also given. Ms. A.C. says the tenant welcomed the idea of the landlords cleaning the yard up.

The tenant monitored their attendance on video from inside the home. The videos were not adduced during the hearing.

On July 4th, according to the evidence of Ms. A.C., Mr. K.C. called a towing company to come and remove a Toyota Tundra truck from the rented premises, "as the vehicle was non-operating and held expired alberta [*sic*] plates…" Ms. A.C. did not indicate by what authority the landlords purported to be acting under in taking this rather unusual action, nor did she indicate that the tenant had been given any notice to remove the truck or that the landlords were going to remove it that day. When they arrived they found a chain across the driveway at the road, barring vehicle entry. They do not appear to have walked into the yard to find the tenant to undo the chain or to ascertain whether the truck was still there. The tow truck man cut the chain and they entered onto the property. The tenant was not home. The truck was gone.

According to Ms. A.C., Mr. K.C. and the tow truck man heard running water in the house. Mr. K.C. tried to enter. The doors were locked and his keys did not work. Ms. A.C. says the locks had been changed by the tenant. Mr. K.C. broke down the door, finding it had been barred by lumber across the door and screwed into the walls. They found the kitchen tap had been left running. A written statement prepared by Ms. A.C., for the tow truck man to corroborate this incident was unsigned by him (though he signed another statement about a later incident). An unsigned statement has little if any evidentiary weight.

The tenant testified that during that July 4th attendance and entry, the landlords stole a Sony video camera worth $750.00 and a Canon video camera worth $260.00, cameras that he had set up to monitor their activity on the property. He referred to photos of the original receipts for the cameras.

The landlord Ms. A.C. denies any theft though she was not there on that day.

Since perhaps late June, the tenant had been constructing a "tiny house" for his use, he says, after eviction. He adduced a photo of it, showing a small shed-like structure perhaps 8'x12', raised perhaps two feet off the ground on temporary, crate-like supports. The building is not attached to the ground and appears to be transportable. No plumbing or wiring is visible. The tenant says he was also building a trailer to haul it.

Ms. A.C. testified that the local government had posted a "stop work" order for the "tiny house."

The tenant says that he returned home from a ball tournament on the evening of August 7h or early August 8th to find that the tiny house had been dragged on a small pontoon boat he had stored under it to the end of the driveway at the public road. It was blocking the driveway. He took photos and adduced them as evidence at this hearing. The photos show the "tiny house"

structure on a deflated pontoon at the beginning of the driveway. Its siding wrap is torn off and the words “your only warning leave!” written in spray paint on the outside wall facing the road. It appears that a hole had been made at the bottom centre of that wall and the structured had been pulled out by its frame, on the pontoon boat.

In my view it would have taken significant power to move the structure from its original location about 80 meters away. The police were called. The tenant says the landlords did it. Ms. A.C. says she doesn’t know how the building got there and the police have not pursued the matter with her.

It appears that two days later, August 10th, the landlord hired the tow truck man again to remove the building from where it sat at the start of the driveway. The tenant somehow retrieved the building from the tow truck company seven days later, at a cost of $703.53. He seeks recovery of that sum.

The pontoon boat was destroyed by being dragged under the structure. The tenant seeks $400.00 as its value.

The tenant says he continued to reside in the rental unit until August 17th. He says on that day he attended the property to find there was no running water and the pump house had been padlocked. He says he broke into the pump house and found that the pump itself had been removed. He says that lacking running water, he stayed at his mother’s house in town after that, returning to the property some days to remove his belongings. Because of this he feels he should not be responsible for September rent.

The landlord Ms. A.C. says the tenant removed and took the water pump and padlocked the pump house.

The tenant testified that when he visited the property on September 4th he found that the doors to the home had been removed by someone. Between September 7th and 10th he says he arranged for a trailer and some help but returned to find new doors and locks on the home and his possessions gone. He searched the property but did not find them.

He says that he is missing a sectional couch worth $1000.00, two coffee tables together worth $400.00, a dining room table worth $500.00 and a metal shelf worth $100.00. He also claims to be missing lumber of a value of $300.00 and construction materials of a value of $500.00. He offered no objective evidence to support any of these valuations, saying only that he has researched and found the lowest used prices for their equivalents.

The landlord Ms. A.C. version of these events is very different. She says that between August 27th and September 9th she and Mr. K.C. were out of town, a four hour drive away. She submitted the signed written statements (prepared by Ms. A.C.) of friends, Ms. D.B and Ms. C.B.. Ms. D.B. indicates she was house sitting the landlords’ home in town while they were

away August 27th to September 9th. The statements of Ms. C.B. and Ms. D.B. are identical in reporting that the two women, for some unstated reason, went to the rental unit on September 7th. They found the front door lying outside and the back door gone. There was an awful stench in the home. The power was off and the fridge door was open with food left to rot and mould. The condiments and all containers had their lids off. There were mouse feces in the bottom of the fridge. The freezer part of the fridge had had meat shoved into its cracks and crevices. There was an "overpowering" urine smell. The curtains had been cut. Panelling had been removed off the wall in the bedroom and the electric panel cover was missing. The shower head nozzle had been removed as well as the drain cover on the bath and bathroom sink. The cover was off the hallway furnace. Batteries had been pulled out of the smoke detector and left hanging. Outlet and switch covers were missing. The well house had been broken into.

The two women left the property and waited for the landlords to return to inform them.

Ms. A.C. testified that on returning home on September 10th she and Mr. K.C. were informed of what happened. She attended the property with the police on September 11th and confirmed the vandalism. She says the police told her that if the tenant returned they would charge him with break and enter.

Ms. A.C. adduced the signed statement of a person claiming to have been the property manager of a rental unit previously rented by the tenant. The statement indicates that the tenant had been evicted yet returned three times, re-entered and changed the locks at that rental unit. Finally, she says, the police broke into that rental unit in an attempt to remove him.

The tenant denies this occurrence and points out his belief that person giving the statement was the sister of the property manager, not the property manager herself.

I note that the statement refers to a Residential Tenancy dispute resolution file number (#249684). The decision on that file indicates it was, in fact, the tenant's application, not involving an order of possession as the written statement claims. The decision confirms however that the tenant had to be forcibly removed from the rental unit by the police.

The tenant seeks half of the bills incurred for utilities arguing that there were a lot of holes and the like in the home and so his heating bills were excessive. He testified that the landlord Mr. K.C. had verbally agreement to pay half. Ms. A.C. denies it.

The tenant's informal monetary order worksheet indicates a claim for compensation for missing outlet and light switches, faucets and drains, lack of septic and water for a week in January and three months without a working washing machine.

Ms. A.C.'s evidence indicates that there was a failure of the septic tank in January and that the landlords were undertaking repair but the tenant beat them too it. She says the landlords paid

the tenant for his work and expenses directly. She indicates there had been a problem with the washing machine but it was corrected in a timely manner without inconvenience to the tenant.

Analysis

I have considered all the relevant evidence presented at hearing though I may not refer to it all in this decision.

Not all the documentation submitted by the parties was presented as evidence though the parties were cautioned that their documentation and digital evidence would not be considered as evidence until they referred to it and it was determined to be admissible and relevant to the issues at hand.

A number of digital photo images were supplied by each side. The images that were adduced as evidence have been printed and attached to this file. The tenant filed digital video material but it was not referred to hearing. I have not considered the material not adduced as evidence at the hearing.

An adjudicator must consider relevant evidence presented at the hearing but is also entitled to consider evidence that should have been presented but was not. In proceedings of this nature that principle must be moderated as the participants are lay litigants. Nevertheless, the landlord Mr. K.C. did not testify or otherwise give evidence. He should have. He played a major role in the history of this dispute.

I find that the tenant has failed to establish there was any agreement for him to deduct what he might have been owed as a carpenter or contractor from his rent. This is not to say he was not owed anything, but I find there was no agreement that he might reduce any such amounts from his rent. Had there been such an agreement there would have been a regular accounting between the parties at rent time. Had there been such and arrangement the tenant would not have paid the rent for March and April without some adjustment for the carport work halted in mid-February and for which he now claims $1200.00. Had there been such an arrangement I'm satisfied the landlords would not have been repeatedly contacting him for the rent in June.

The landlord Ms. A.C. acknowledged and I find that there was an agreement to deduct $500.00 from the May rent for the swing repair. $450.00 remains owing for that rent.

I decline to adjudicate on the question of whether or not the tenant as a carpenter/contractor performed services and is owed money by the landlords for the carport, the "crap shack" deconstruction, the back deck enclosure or the Adirondack chair. It is not a landlord and tenant dispute. The only connection that work might have had to this tenancy is that the tenancy happened to introduce the carpenter/contractor to the customer.

Residential Tenancy arbitrators are considered by the courts to have an expertise in the area of landlord and tenant law and are empowered by the *Act* to resolve disputes between landlords and tenants. They have no power to resolve disputes between a carpenter/contractor and his client. Those matters are left to the courts.

I do not have jurisdiction to deal with the tenant's claim for compensation for the carport construction, the "crap shack" deconstruction, the Adirondack chair construction or the deck enclosure work. He is free to pursue his carpenter/contractor claims in a court of competent jurisdiction.

This determination does not affect the landlords' right to claim damages relating to unwanted or unauthorized structures left by the tenant at the end of the tenancy, whether he was a carpenter/contractor or not.

The credibility of the parties is a central issue in the dispute. I do not accept the tenant's evidence to be credible, even without hearing evidence from Mr. K.C.

I do not believe the tenant when he says the deck enclosure was constructed at the bidding of the landlords to house their medical grow operation. A reasonable person would not commence to construct an enclosure to house it without seeing that permit. The landlord Ms. A.C. says they do not have a permit for such activity. If they had such a permit there is no reason they would not have admitted it. There would have been discussion about electrically servicing the enclosure, yet there is no such evidence before me. The tenant described himself as a mere "watchman" over the grow operation yet there was no evidence that the landlords ever came onto the property to tend the grow operation. Had there been such an arrangement it would have been an obvious reason for the landlords to share the Hydro costs the tenancy agreement required the tenant to pay, yet the tenant made no mention of such a reason when testifying to the alleged agreement to split utility costs. Had there been such an arrangement Ms. A.C. would not have given the tenant written notice in June to take down the enclosure. Had there been such an arrangement there would not have been a grow operation in a second building, the storage shed.

The tenant's allegation that the landlords came onto the property while he was away and set up the grow operation in the storage shed, along with the "extremely bright lights and fans" reported by Ms. C.B. just in order to take a video of it and frame him defies reason.

I do not believe the tenant when he testifies that in early September he arrived at the property to find the doors to the home gone and then later, new doors installed and his possessions gone. The evidence shows the landlords were away during that time as corroborated by their house sitter.

I dismiss the tenant's claim for the value of alleged stolen cameras. His evidence alone is not sufficient proof in this case. As well, I dismiss the tenant's claim for missing furniture, shelving,

lumber and construction material. His evidence alone is not sufficient to establish the claim on a balance of probabiltiies.

The dragging of the "tiny house" and destruction of the pontoon boat beneath it is a different matter. It has the appearance of a pure retaliatory action by the landlords. At the time of the occurrence, August 7th or 8th, the landlords had just been denied their request for an early end to the tenancy and an order of possession. The landlords had not received rent for months and in their view the tenant was mistreating their property. The press clippings the landlord filed in this application show the landlords felt the government Residential Tenancy system had utterly failed them.

In such circumstances a landlord might well consider solving the problem by extrajudicial means and, in my view, the landlords had shown such an inclination by coming onto the property on July 4th with the intention of towing away the tenant's truck. Further, the landlord Ms. A.C. testified that it was the tenant who padlocked the pump house. Yet in the mutual statements of Ms. D.B and Ms. C.B., statements prepared by Ms. A.C., they relate that on September 7th they found the pump house had been broken into. If the tenant placed the lock on the pump house, why would he break in?

It may be that the tenant dragged the building and boat himself in order to "set up" the landlords. Such conduct would not have been beyond the realm of the possible in this ongoing dispute.

It is the tenant's job to tender evidence to show that it is more likely or probable that the landlords or their agents, not he, pulled the "tiny house" and boat out to the road and spray painted the side of it. The evidence in this matter justifies speculation that the landlords might have done it, however, in the circumstances of this case, the tenant's uncorroborated evidence about who he thinks committed the act is not sufficient to raise the matter from speculation to the level of proof on a balance of probabilities. I dismiss this item of the tenant's claim.

I dismiss the tenant's claim for recovery of a share of the Hydro bills. The tenancy agreement provides he is responsible for it. There is none of the evidence one would expect to support his contention. For example, there are no communications reporting a Hydro bill to the landlords and requesting reimbursement, nor any text messages, between the parties about it. Given my finding about the tenant's general credibility I find he has not established a variation from the written agreement regarding utility costs.

The tenant offered little if any substantive evidence about his claim for compensation regarding the septic and water supply or the faucet leaks or the switch covers or the washing machine. He offered no evidence explaining how or to what extent he was inconvenienced.

I accept the landlord Ms. A.C.'s evidence about the septic and the washing machine. She testified that in January there was a septic issue the landlords were addressing but which was resolved by the tenant and paid for by the landlords. There was no allegation of inconvenience

at that time. There was a washing machine problem early in the tenancy but the tenant was never without a working washing machine.

It is not for me to speculate on how the tenant might have been inconvenienced by not having a working septic field or not having a working washing machine or switch and outlet covers or faucet leaks. He has not given that evidence and so he has failed to establish these claims. I dismiss them.

The landlord Ms. A.C. is entitled to recover the remaining May rent of $450.00 and the unpaid rents for June, July and August. The tenant continued to return to the property into the month of September and assert possession. The landlords are entitled to recover $950.00 for that month as well.

I grant the landlord Ms. A.C. a monetary award totalling $4250.00 plus $50.00 filing fee. I authorize her to retain the security deposit and pet damage deposits totalling $950.00 in reduction of the amount awarded. There will be a monetary order against the tenant for the remainder of $3350.00.

The landlord's claim was amended at the October 22nd hearing to add her claim for August and September rent. In her materials she refers to a claim to "breach of lease agreement rent for October and November." This hearing did not deal with those claims as it did not deal with evidence regarding the state of the premises after the landlords regained possession in September and whether the premises were rentable at that time. The landlords are free to re-apply for that claim and if leave is required, I grant that leave.

Conclusion

The tenants' application is dismissed.

The landlord's application is allowed. There will be a monetary order against the tenant in the amount of $3350.00.

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 02, 2014

Residential Tenancy Branch