Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RP, PSF, LRE, OPT, AAT, FF

Introduction

This hearing was scheduled to deal with multiple remedies requested by the tenant. The tenant had applied for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; Orders for compliance, repairs, services or facilities; a request that conditions be set on the landlord's right to enter the rental unit; access to/from the unit by the tenant or the tenant's guests; and, an Order of Possession for the tenant.

Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

In filing the Application on June 19, 2014 the tenant sought monetary compensation of $1,620.00. The tenant did not serve the landlord with his Application until early July 2015, more than three days after the hearing package was prepared. The tenant also attempted to revise his monetary claim to increase it by way of a written submission as opposed to an amended Application.

In speaking with the landlord she confirmed that she received the tenant's Application, evidence and revised monetary calculation and she was prepared to respond to the tenant's claims, as revised. As such, I was satisfied the landlord was not prejudiced by the tenant's late service of his Application and failure to serve an amended Application. Therefore, I continued to hear the tenant's Application and I amended it to reflect his increased monetary claim as provided by way of his written submission. I also considered his documentary evidence in making this decision.

The landlord submitted that she had difficulty serving the tenant with her evidence package as he was no longer staying at the rental unit and he had not provided her with

a forwarding address. The landlord explained that she posted her evidence on the door of the rental unit and then she would send the tenant a text message to inform him that there were documents for him on the door. The landlord observed that the documents were subsequently taken off the door. The tenant confirmed that he received the landlord's evidence package and was prepared to respond to it. Therefore, I considered the landlord's evidence package in making this decision.

The tenant also stated that he had received a 10 Day Notice to End Tenancy for Unpaid Rent dated July 6, 2015; that he did not pay the outstanding rent; that he had his parents vacate his rental unit on his behalf in the week prior to this hearing; and, that he has no desire to return to the rental unit. The landlord acknowledged that she saw people removing items from the tenant's unit approximately 4 or 5 days earlier but pointed out that some furniture remained in the rental unit and the keys had not been returned to her. The tenant responded by stating anything of his that was left in the rental unit is abandoned and may be disposed by the landlord. The tenant also stated that he will instruct his mother to return the keys to the landlord. Having heard the tenant clearly communicate that the rental unit has been vacated and that any remaining items are abandoned property that may be disposed of, I informed the parties that effective immediately possession of the rental unit has reverted back to the landlord and I authorized her to dispose of the tenant's property with liberty to pursue the tenant for the cost to do so.

The parties discussed arranging a move-out inspection. The tenant stated he will appoint his mother to act as his agent for purposes of participating in a move-out inspection and that he would instruct his mother to contact the landlord, most likely through text message, so as to set up a date and time to conduct the move-out inspection could be arranged. The parties were informed of their obligation to make reasonable efforts to accommodate the date and time proposed by the other party for the move-out inspection.

Finally, as the tenancy has ended, it was not necessary to consider any of the tenant's remedies except for the tenant's monetary claim.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation for the amounts claimed from the landlord, as amended?

Background and Evidence

The tenancy commenced in November 2013 on a month to month basis. The tenant paid a $450.00 security deposit and a $450.00 pet damage deposit. The tenant was required to pay rent of $900.00 on the 1st day of every month and paid a further $12.00 for additional cablevision services. The last month for which the tenant paid rent was June 2015.

The tenant's monetary claim, as amended, consisted of the following amounts:

June rent (one half of the rent paid to landlord)	$ 450.00
July rent (paid to his parents)	900.00
Moving costs (paid to his parents)	300.00
Food in June (paid to his parents)	200.00
Food in July (paid to his parents)	300.00
Stress and loss of quiet enjoyment	500.00
Sub-total	$2,650.00
Return of security deposit	450.00
Return of pet damage deposit	450.00
Total claim	$3,550.00

With respect to the tenant's request for return of the security and pet damage deposits, I found this request pre-mature as the tenant has not yet provided the landlord with a forwarding address in writing, as required in order to seek return of a security or pet damage deposit, and I summarily dismissed this portion of his claim with leave to reapply.

The balance of the tenant's monetary claims relate to water damage in the rental unit. The cause of the leak was under dispute as where the tenant's claims against the landlord. Below, I have summarized the parties' respective positions.

Cause of water damage

The tenant described how upon returning home one day in early June 2015 he noticed that the kitchen cabinet drawers were stuck closed. After pulling on the drawers harder they opened and the tenant discovered water in the drawers.

It was undisputed that the tenant notified the landlord that he found water in the drawers although the parties provided differing dates as to when the tenant first notified the landlord. The tenant's written submission indicates that he informed the landlord of water in the drawers on June 6, 2015; however, during the hearing he stated that he

notified the landlord on June 8, 2015. The landlord testified that she was out of town on June 7 and 8, 2015 and that the tenant informed her of the water damage on June 9, 2015.

Both parties provided consistent testimony that after notifying the landlord of the issue, the landlord attended the rental unit to view the damage and shortly thereafter the landlord had a representative from a home building supply company attend the unit and she reported the matter to her insurance company who sent an insurance adjuster to the property.

I heard that a restoration company was contacted by the landlord's insurance adjuster on June 13, 2015. A manager with the restoration company appeared at the hearing as a witness for the landlord. The witness testified that he is certified in water damage mitigation and restoration and mould remediation and has many years of experience in this field of work. The witness testified that after inspecting the rental unit he concluded that the cause of the water damage was from water overflowing the kitchen sink. This conclusion was drawn based upon his observations that there was swelling on the underside of the kitchen counter, water in the kitchen cabinet drawers, moisture at the base of the lower cabinet doors; whereas, moisture readings were taken of the adjacent walls and there was no signs of excessive moisture in the walls. Aside from excessive moisture present in the countertop and cabinetry, the witness determined that the laminate flooring was also affected and that it was starting to buckle from the presence of excessive moisture.

The tenant stated that the drain pipe under the kitchen sink popped off on occasion and this could explain the water on the floor. The tenant acknowledged that it would not explain the water in the drawers since they are higher than the drain pipe. The tenant suggested that water could have come from the landlord watering in the back yard or the landlord may have entered his unit and used his sink.

The landlord testified that she was unaware of any problems with the drain pipe under the kitchen sink and the landlord submitted that there were no signs of water damage under the sink. The landlord also testified that she was away in the days preceding the flood and had not been watering the backyard. The landlord also denied entering the tenant's unit to use his kitchen sink explaining that she has perfectly good sinks in her unit located above the rental unit.

Insurance
The tenant acknowledged that he did not carry tenant's insurance. The landlord testified that she has an on-going insurance claim with respect to the damage and that her insurance company has indicated that they may pursue the tenant to recover their losses.

Water damage mitigation
The landlord's witness testified that starting June 14, 2015 water damage mitigation work commenced which included installation of fans, removal of toe kicks, drilling of holes to test for moisture, removal of the laminate flooring and spraying of mould inhibitors. Moisture readings needed to be taken on a daily basis until such time the moisture content is below a certain amount. On June 22, 2015 the kitchen cabinetry, countertop, and kitchen sink were removed as the moisture content remained too high.

Since removal of the kitchen cabinetry and drying equipment on June 22, 2015 the restoration company has not returned to the property to perform any more work.

Access to the rental unit
The tenant submitted that he was not given any notice of entry by the landlord or the restoration company and that there were repeated entries into the rental unit without notice or his consent. The tenant had complained of this to the landlord via text message and the landlord responded, via text message, to indicate she would look into it.

The landlord testified that she understood the restoration company would telephone the tenant prior to entering the unit.

The manager at the restoration company testified that it is their practice to obtain the key for the subject property and then when the technicians attend the property they knock on the door. If there is no answer the technicians enter the unit and announce their presence.

The landlord arranged for a meeting that included the tenant and the manager of the restoration company, the landlord's daughter, among others. The meeting took place on June 17, 2015. I heard that one of the purposes of the meeting was to determine a way for the restoration company to enter the unit without conflict with the tenant; and another purpose was for the landlord to request the tenant's agreement to end the tenancy. The landlord had prepared a Mutual Agreement to End Tenancy but the

tenant did not sign it. The meeting evidently ended poorly with both parties pointing to the other party as being verbally abusive.

The manager acknowledged that he participated in a meeting with the landlord and tenant, among others, in an attempt to determine a suitable way to gain entry into the unit as it was necessary for them to attend the unit on a frequent basis while the water mitigation efforts were underway. As a result of the meeting the manager understood that the tenant wanted to be telephoned before there was entry. After the meeting the technicians reported that they tried to telephone the tenant three times and there was no answer so they entered as usual by knocking and announcing themselves. The manager submitted that water mitigation efforts are considered an emergency situation due to the possibility for mould growth and further damage. The tenant testified that his telephone rang but there was no one on the other end.

On June 18, 2015 the landlord sent a text message to the tenant to advise him that the rental unit was “uninhabitable”. The tenant responded by enquiring as to the meaning of that to which the landlord responded she wanted to talk to him about it the following day. On June 19, 2015 the landlord issued a letter to the tenant advising him that the unit was uninhabitable because the kitchen cabinets and countertop had to be removed. The tenant filed his Application on June 19, 2015.

Tenant’s monetary claim

June rent -- $450.00

The tenant submitted that he seeks return of one-half of the rent for June 2015 because he had to endure the disruption of drying equipment running in his unit; frequent persons in his unit to deal with the water damage; and, because the landlord informed him that the rental unit was “uninhabitable” by way of a text message on June 18, 2015 and that he had to scramble to find alternative accommodation.

The landlord testified that the insurance company treats water damage as an emergency situation so as to prevent further damage and mould; thus, necessitating the use of drying machines and frequent access to the rental unit by the restoration company. The landlord was of the position that the tenant is not entitled to a refund of June’s rent since he was not denied access to the rental unit and that he could have lived in the rental unit even after the kitchen was removed on June 22, 2015. The landlord testified that the tenant had already informed her that he would be staying with his parents for a few days.

July rent -- $900.00
The tenant submitted that he paid his parents $900.00 to live at their home in the month of July 2015. The tenant pointed to a document that he called a receipt as proof he paid rent to his parents. The tenant testified that he gave his parents cash; however, upon further enquiry he stated that he had a joint chequing account with his mother and she would take money as needed.

The landlord was not agreeable to compensating the tenant for July rent and pointed out that the tenant did not pay any rent to her for the month of July 2015.

The tenant acknowledged that he did not pay any rent to the landlord for July 2015 and pointed out that he was served with two eviction notices: a 1 Month Notice for Cause dated June 24, 2015 and a 10 Day Notice to End Tenancy for Unpaid Rent dated July 6, 2015.

Moving costs -- $300.00
The tenant submitted that he paid his parents $300.00 for use of their vehicle to move his personal possessions from the rental unit. The tenant submitted a document that he referred to as a receipt and it dated July 1, 2015.

The tenant testified that he had taken some clothing and personal items while the water mitigation efforts were underway and he went to stay at his parents but that he left other things such as food and furniture in the rental unit. The furniture was removed in mid-July 2015 by his parents.

The landlord was not agreeable to paying for the tenant's moving costs.

Food costs (June and July) -- $500.00
The tenant submitted that he reimbursed his parents for food he consumed while staying at their home in June and July 2015. The tenant pointed to documents he referred to as receipts which indicated he paid his parents for room and board. The tenant explained that his parents would shop for groceries and he was responsible for paying for a portion of the grocery bill.

The landlord submitted that his rent for the rental unit did not include food and that the tenant was always responsible for his own food costs.

The tenant explained that he had left food at the rental unit and that he did not take it to his parents' house. Rather, he took clothing and some personal items in June 2015 but

later, when he returned to the rental unit from time to time, most of the fresh food had expired and he threw it out.

The landlord pointed out that the tenant was not precluded from taking his food as he always had access to the rental unit.

Stress and loss of quiet enjoyment -- $500.00
The tenant submitted that he suffered loss of quiet enjoyment due to the frequent entries by the restoration crew without notice and on one occasion there was a confrontation with one of the crew members. The tenant also submitted that he was advised by the restoration crew that he had no rights as a tenant.

The tenant also described how he felt harassed and subject to confrontation when he attended the meeting and the landlord's daughter pursued him into the yard in an attempt to get his agreement to end the tenancy.

The landlord was of the position the tenant was being difficult with respect to permitting entry to the restoration crew in order to mitigate water damage that she alleges the tenant caused.

The landlord submitted that it was the tenant that was acting bizarrely on the day of the meeting and was refusing to discuss matters and becoming abusive.

Analysis

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 in section 7 and 67 of the Act. Accordingly, 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 whatever was reasonable to minimize the damage or loss.

I provide the following findings and reasons with to the tenant's monetary claims against the landlord.

Cause of water damage

For the most part, the tenant's claims relate to losses he suffered as a result of a flood. The landlord has asserted that the tenant's actions or neglect caused the flood and the damage to the rental unit. The landlord produced a witness to provide evidence in support of her position. The witness attested to his experience and credentials in making determinations as to the cause and treatment of water damage which were unchallenged by the tenant and I relied upon his expertise. I also found the witness's testimony to be credible and reliable as for the most part he was reading from notes made by him and his crew with respect to activity at the subject property.

Based upon the witness's testimony, I accept that the water damage in the rental unit was the result of water overflowing the kitchen sink in the rental unit. I find the tenant's suggestions that the landlord may be responsible for causing the water to flow over the countertop to be unlikely considering the landlord provided undisputed testimony that she had not been watering in the backyard and she had been away from the property in the days preceding the flood. I also find the tenant did not establish any reasonable likelihood that the landlord was using his sink considering the landlord was away in the days preceding the flood and her testimony that she would have no reason to use his sink when she had perfectly good sinks to use upstairs. I also found the tenant's submission that the drain pipe "popped off" from time to time to be unsupported and not connected to the water damage since it did not explain how water came to be in the drawers above the drain pipe or under the edge of the countertop. Rather, I found the tenant's suggestions as to the cause of the flood to be thinly veiled attempts to divert attention away from his negligence in the matter and I find, on the balance of probabilities, that the tenant's actions or negligence to be the cause of the water damage in the rental unit.

Tenant's monetary claims

Rent

Since I have found the tenant's actions or neglect the most likely cause of the water damage, I find it would be illogical to award him compensation for loss of use of the rental unit. Any award to the tenant for loss of use would create a loss on part of the landlord and the landlord would be entitled to recover losses associated to the water damage the tenant caused from the tenant. Thus, an award to the tenant for loss of use would be circular and of no effect. Therefore, I decline to further consider the tenant's request for compensation equivalent to one-half of June rent and July rent and these portions of his claim are dismissed.

Moving costs

I find the tenant's claim with respect to moving costs not sufficiently clear or supported. The tenant testified that he removed some clothing and personal items in June and larger items were moved in mid-July 2015; yet, the "receipt" for moving costs is dated July 1, 2015. I also noted the "receipt" to be lacking veracity and could have been prepared by anyone since it does not include a signature or contact information for the person(s) who prepared the document.

Nevertheless, as explained previously, having found the tenant responsible for the flood damage, it is illogical to award him compensation to move his personal property because of a flood he caused. Therefore, I dismiss this portion of the tenant's claim.

Food costs

Food is not something that was included in the rent the tenant was required to pay to the landlord for rent for the rental unit. The tenant was not denied the opportunity to remove any food he had in his unit; yet, he chose not to do so. Furthermore, the landlord is not responsible for providing the tenant alternative room and board due to flood damage caused to the rental unit by the tenant. For all of these reasons, I dismiss the tenant's request to recover food costs from the landlord.

Stress and loss of quiet enjoyment

Under section 28 of the Act, a tenant is entitled to quiet enjoyment of the rented premises, including reasonable privacy. Section 29 of the Act provides for a landlord's restricted right to enter the rental unit which extends to any persons she authorizes to enter the rental unit, such as the restoration crew. Section 29 serves to provide a mechanism for landlords to enter the rental unit from time to time for lawful purposes but to also protect the tenant's right to quiet enjoyment and privacy.

I was provided disputed verbal testimony as to verbal abuse that took place during a meeting between the parties. I find the disputed verbal testimony insufficient to meet the tenant's burden to prove this portion of this claim.

I have considered the tenant's assertion that one or more of the restoration crew members was confrontational toward him; however, I also note that the tenant indicated in his written submission that he was "VERY upset" to find the crew member in his unit. Thus, I find it likely that words were exchanged between the men.

Although I make no finding as to whether the landlord is vicariously liable for the actions of the restoration crew members the landlord did have an obligation to the tenant under section 29 of the Act to gain his consent to enter or give him a 24 hour notice of entry to

advise him as to when entry would be required. Gaining a tenant's consent to enter or giving a tenant notice of entry may be accomplished for multiple dates, so long as the consent or notice is not more than 30 days in advance. Having heard the manager of the restoration crew testify that he was provided a key to the rental unit and would have discussions with the landlord about the anticipated mitigation work, I find the landlord's obligation to the tenant could have been rather easily met had the landlord given the tenant a written notice of entry after speaking with the manager. From the landlord's testimony she stated that she relied upon the restoration crew to telephone the tenant before entering. Ultimately, gaining the tenant's consent to enter or giving the tenant written notice is the landlord's obligation and if she relies upon others to do that she is responsible for any failing in that regard. It is also important to note that telephoning the tenant and receiving no answer, as the restoration crew member reported, does not amount to gaining the tenant's consent or giving the tenant a 24 notice of entry.

Section 29 of the Act does provide an exemption from the requirement to gain a tenant's consent to enter or give the tenant a written 24 notice of entry where an emergency exists and it is necessary to enter to protect life or property. This exemption to the consent or notice requirement is intended to apply in the most dire of circumstances. While I accept that dealing with water damage is to be done in an urgent and timely manner, having heard that water was not flowing into the unit uncontrollably; the flood took place on or about June 6 – 8, 2015 and the restoration crew was entering from June 14, 2015 onwards, approximately one week later, I find the exemption for emergency situations did not apply.

In light of the above, I find the landlord was obligated to gain the tenant's consent to enter the unit or give the tenant a written 24 hour notice of entry; the landlord failed to do so; and, I find the tenant provided evidence to demonstrate the tenant was significantly disturbed by one entry in particular that he communicated to the landlord. Therefore, I find portion of the tenant's claim to have some merit and I award the tenant compensation equivalent to one-half of a day's rent, or $15.00 [calculated as $900.00 / 30 days x 50%].

With respect to the text message of June 18, 2015 and letter of June 19, 2015 where the landlord advised the tenant that his unit was "uninhabitable", I find it likely that the communications were motivated more so by the unsuccessful meeting that took place the evening prior considering the timing of the events that transpired and the landlord's testimony during the hearing where the landlord stated that the unit was habitable despite removal of the kitchen. Such forms of communication do not end a tenancy and were essentially of no legal effect; however, I find it reasonable that the tenant would file an Application for Dispute Resolution in response to those communications which he

did on June 19, 2015 and I award the tenant $50.00 to recover the filing fee paid for his Application. However, considering the tenant was not denied access to the rental unit; the tenant had already been staying at his parents' home when he received the communications; and, the tenant had already decided to vacate the rental unit by the date of the hearing, I find any other loss related to these communications to be undeterminable, if any, and I make no further award to the tenant.

Monetary Order

I have awarded the tenant a total of $65.00 for loss of quiet enjoyment due to the landlord's failure to give the tenant notice of entry and recovery of the filing fee paid for this Application in response to the landlord's unsupported message that the unit was "uninhabitable".

To enforce the Monetary Order it must be served upon the landlord and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The tenant has been awarded $65.00 and the balance of the tenant's claims have been dismissed, with the exception of the tenant's claims for return of the security deposit and pet damage deposit which were premature and dismissed with leave. The tenant has been provided a Monetary Order in the amount of $65.00 to serve and enforce.

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 18, 2015

Residential Tenancy Branch