



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding URBAN PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was represented by its agents: LB and CD. The landlord elected to call one witness: HS.

The tenant testified that he served the landlord with the dispute resolution package on 17 July 2015 by registered mail. The tenant provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement? Is the tenant entitled to a monetary award for the return of his security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the witnesses, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began 1 September 2013. The tenant and the landlord entered into a written tenancy agreement on 6 August 2013 (the First Tenancy Agreement). The tenancy agreement established that monthly rent was \$2,800.00. The tenancy was for an initial fixed term of one year followed by a month-to-month tenancy. The landlord has not returned any portion of the \$1,400.00 security deposit that was collected at the beginning of the tenancy.

HS and the tenant were involved in a relationship. This relationship is documented in emails and texts that span into late September 2013. At some point prior to 29 July 2013, HS and the tenant decided to move in together. The tenant testified that the agreement would be that the tenant would be the tenant for the purposes of the tenancy agreement and the other occupants would not be party to that agreement. The relationship between the tenant and the other occupants would be a sublet arrangement. HS testified that the intent of the parties was to merge two households into one. HS testified that her daughter, MW, and SG formed HS's household and the tenant formed his household.

On 29 July 2013 the tenant forwarded the craigslist posting for the rental unit to HS.

The tenant provided me with an electronic transfer confirmation setting out that the tenant transferred \$100.00 to the landlord's agent on 3 August 2013. At some point a few days later the tenant attended in person at the landlord's offices and paid \$1,300.00 to the landlord in cash for the balance of the security deposit. LB admits that the tenant dropped off the balance of the deposit.

The tenant was issued a receipt. HS testified that the receipt was supposed to be in both hers and the tenant's names. HS testified that she withdrew the money for the security deposit in another city and the tenant drove to her to retrieve it. I was provided with a receipt dated 6 August 2013 at 1623 that shows a withdrawal in the amount of \$1,280.00 from HS's account. The receipt is from a branch located in the same city as the rental unit.

The tenant submits that HS's statements are impossible. In particular, the tenant states that he paid \$100.00 of the security deposit to secure the tenancy and a subsequent

\$1,300.00 thereafter. The tenant testified that he personally took the cash to the landlord's office and delivered the cash to the front desk. The tenant testified that he had the cash available to him as a result of looking for places in July. Further, the tenant submits that it is impossible that HS received a portion of the deposit from SG as she was unknown to the tenant or HS at the time the security deposit was remitted.

On 6 August 2013, the First Tenancy Agreement was entered into. The First Tenancy Agreement sets out that the tenant as the tenant. LB admits that the tenant was the sole tenant listed. The HS testified that she was not living in the city when the tenant signed the First Tenancy Agreement. AS, JT, HS are listed, but not as tenants. In August 2013 agents of the landlord emailed copies of the First Tenancy Agreement to the tenant. JT never occupied the rental unit.

On 14 August 2013 SG contacted the tenant about renting a room in the rental unit. The tenant replied to this email and forwarded this email to HS.

LB testified that at the end of August she became aware that the tenant was having others move into the rental unit. LB submitted that clause 19 of the tenant prevented the tenant from subletting. LB testified that an agent of the landlord contacted the occupants to insist that they come in to sign a tenancy agreement with all named.

On 1 September 2013 the tenant paid rent for the rental unit. The tenant provided me with a copy of his bank statement that shows that cheque #182 in the amount of \$2,800.00 was withdrawn from his account on 4 September 2013. HS testified that she paid her rent directly to the landlord in September and received a receipt in her name. HS denied that she ever paid rent through anyone. Later in her testimony, HS retreated somewhat from this position testifying that she could not recall with certainty, but believed that she paid it directly.

HS testified that at some point in September the police telephoned HS to inform her that the tenant had been convicted of a criminal offence and told HS that the tenant should not be living in the rental unit or entering into a tenancy agreement. The tenant submits that this does not make sense and questions whether the police would initiate contact with HS at all.

On 2 October 2013, the tenant's bank account shows an attempted withdrawal of cheque #183 in the amount of \$2,800.00 from his account. The cheque is returned for insufficient funds and the tenant incurred a fee in the amount of \$45.00.

On 3 October 2013, the landlord entered into a second tenancy agreement for the same property (the Second Tenancy Agreement). That tenancy agreement was between the landlord and the occupants as cotenants. The Second Tenancy Agreement sets out the tenant, HS, MW, and SG as tenants and AS as a minor occupant. The Second Tenancy Agreement is signed by HS, MW, and SG, but is not signed by the tenant.

On 9 October 2013, the tenant's bank account shows a withdrawal of cheque #189 in the amount of \$560.00. The tenant submitted six postdated cheques for one quarter the rent amount.

The Second Tenancy Agreement was sent by email to the tenant on 15 October 2013.

On 15 October 2013 the tenant wrote to the landlord's agent:

Now if you could please let me know why this lease was made when I had already signed a lease for these premises without [SG] on it.

I never authorized [SG] and there now seems to be 2 leases with different people's names on them for the same property for the same time frame.

On 15 October 2013 the landlord's agent wrote to the tenant:

We at [landlord] were asked by the other adults who already showed to be persons to occupy the premises to be included in the agreement as equal tenants, which we have no issue with doing.

If you look at the original RTA It does show the others listed as occupants of the residence, I believe you and your roommates have been over this and is an internal issue to be taken up amongst all of you.

HS and SG alleged to the police that they had reasonable grounds to fear the tenant on basis of incidents which occurred between 7 September 2013 and 15 October 2013. An "information" was sworn on this basis on 23 October 2013. The tenant was apprehended by the police and held pending a bail hearing. The police seized the tenant's keys to the rental unit.

On 12 November 2013, the tenant's bank account shows an attempted withdrawal of cheque #190 in the amount of \$560.00. The cheque was returned for insufficient funds and the tenant incurred a fee in the amount of \$45.00.

The tenant believes that the landlord knew that the tenant had vacated the rental unit as a result of the police action precipitated by the occupants. LB testified that the landlord

contacted HS in November after the tenant's November cheque was returned for insufficient funds. The remaining occupants paid the balance of rent owed.

The tenant caused "stop payments" to be placed on the remaining rent cheques and incurred five fees in the amount of \$12.50 each.

While the tenant was in custody, using the Second Tenancy Agreement, the occupants entered into a service agreement with a towing company. Using that agreement, the occupants had the tenant's motorcycle and van impounded. The tenant provided me with two tow away notices dated 11 November 2013. HS testified that she authorized the tenant's vehicles to be towed and that the landlord did not have any involvement. LB denied that the landlord had any knowledge of the vehicles being towed.

On 18 December 2013, the tenant was granted bail and shortly thereafter was released. The tenant was not permitted to return to the rental unit. The tenant reported that the charges were eventually "dropped" by crown counsel.

On or about 30 December 2013 the tenant retrieved his motorcycle from the impound lot. The tenant could not afford to retrieve his van at that time. The van was destroyed on or about 12 March 2014.

On 23 January 2014 the tenant wrote to the landlord requesting repayment of the security deposit.

LB testified that in January the landlord's agents learned that HS had paid the deposit to the tenant to remit to the landlord. LB testified that the landlord asked for proof the withdrawals. HS testified that she was surprised that the landlord did not know that HS paid any portion of the security deposit.

On 30 January 2014, HS wrote to the landlord asserting that she provided funds for the security deposit:

I am going to pay the extra one hundred and twenty dollars that my bank statement does not account for that was [the tenant's] portion. Then you can release to him his portion of one hundred and twenty dollars and still have the full damage deposit for the household. ... [SG] will be writing a letter to concur with this statement that I provided the total amount of the damage deposit after collecting monies from herself and [MW] and myself to put it all together and have it bought to you for damage deposit, as we could only put it in one person's name we chose [the tenant], for at the time we trusted that he would be honest.

On 31 January 2014, the landlord wrote to the tenant:

We have received documentation supplied from the bank which shows that out of the \$1,400.00 security deposit for [the rental unit], \$1,280.00 of that was given out of [HS's] account on the day in which you came into the office on August 6th, 2013. For our records this is sufficient proof that these funds were not supplied by you as you are stating but in fact by [HS].

At this time it is disputed that the final \$120.00 was also supplied to you in cash by [HS], therefor we will need for you to produce proof to our office that this amount was paid out of your account.

The tenant provided me a receipt from a cookware store in the amount of \$75.35

The tenant submits that he is entitled to compensation in the amount of six months of rent for the breach of the First Tenancy Agreement for his undue hardship and stress.

The tenant claims for \$23,703.85; however, he details a claim in the amount of \$23,704.65:

Item	Amount
Compensation for Breach	\$16,800.00
Impound of Motorcycle	876.80
Destroyed Van	3,000.00
Kitchen Goods	75.35
NSF Fees	90.00
Stop Payment Fees	62.50
Return of Security Deposit	1,400.00
Subsection 38(6) Compensation	1,400.00
Total Monetary Order Sought	\$23,704.65

Analysis

The First Tenancy Agreement was entered into by the tenant and landlord only. The remaining occupants were not privy to the First Tenancy Agreement. Once entered into the First Tenancy Agreement was binding and enforceable on the landlord and tenant.

The landlord has not provided any legal basis (either contractual or statutory) that would have entitled it to unilaterally rescind the First Tenancy Agreement and then enter into the Second Tenancy Agreement. I reject the landlord's submission that the alleged contravention of Clause 19 of the tenancy agreement was grounds to enter into the Second Tenancy Agreement. The remedy for the landlord was to issue a 1 Month Notice to End Tenancy for Cause pursuant to paragraph 47(1)(i) of the Act. The landlord was not entitled to the self-help remedy of entering into the Second Tenancy Agreement.

By entering into the Second Tenancy Agreement without lawful right, the landlord breached the First Tenancy Agreement.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act or a tenancy agreement, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss.

As a result of breaching the First Tenancy Agreement, the landlord gave rights to the occupants that they were not entitled to have. As a result, the tenant lost the sole right to possession of the rental unit under the tenancy agreement. It is clear the tenant lost the value of the First Tenancy Agreement. The tenant values this loss at six months' rent or \$16,800.00 for his "undue hardship and stress".

The tenant's claim is that of a non-pecuniary loss. By its very nature, the assessment of compensation for non-pecuniary losses is not a precise science or a calculation. I have provided reasons for my determination of the value of the tenant's non-pecuniary loss below.

On the basis of the tenant's testimony, it is clear that he did not intend to make use of more than one quarter of the rental unit at a monthly value of \$560.00. The initial

tenancy was for a term of one year. This means that the total value of the tenancy to the tenant was approximately \$6,500.00. In light of this, the tenant's valuation of his loss in the amount of \$16,800.00 is too high.

But for the landlord's breach of the First Tenancy Agreement by entering into the Second Tenancy Agreement, the tenant would have been the sole tenant of the rental unit for the period 1 September 2013 to 31 August 2014 although not the sole occupant. The landlord acted with reckless disregard for the tenant's rights in breaching the First Tenancy Agreement and entering into the Second Tenancy Agreement. By doing so, the tenant lost the ability to control the rental unit and as a result the tenant lost his living quarters. The landlord acted unlawfully and did cause the tenant stress and hardship. It was foreseeable that by giving the occupants rights as cotenants the landlord was placing the tenant's use of the rental unit in jeopardy.

In consideration of the above factors, I find that the tenant is entitled to a global award in the amount of \$2,800.00 for his non-pecuniary losses resulting from the breach of the First Tenancy Agreement.

The tenant seeks compensation for the towing of his two vehicles. Pursuant to section 67 of the Act, in order to award damages those losses must "result" from the landlord's conduct. In this case, the landlord's conduct was not the proximate cause of the tenant's vehicles being towed or destroyed. The loss was caused directly by the occupant HS. Further, the losses (as caused by HS) are not a reasonably foreseeable effect of entering into the Second Tenancy Agreement. I find that the landlord did not cause the tenant to experience the losses in respect of his two vehicles. Similarly, the loss of the kitchen equipment was not caused by the landlord. On this basis, I find that the tenant is not entitled to recover from the landlord for these losses. This decision does not prevent the tenant from seeking compensation from HS before a body of proper jurisdiction.

The tenant alleges that as result of the landlord's breach of the First Tenancy Agreement he incurred banking fees totalling \$152.50. Ninety dollars of this cost was in respect of fees for cheques drawn on insufficient funds for rent cheques in October and November. The stop payment fees were incurred for the remaining cheques held by the landlord.

I find that the landlord did not know that the tenant had vacated the rental unit until after the tenant's November rent cheque was returned for insufficient funds. I find that the landlord did not cause the losses for insufficient funds as the landlord was not aware that the tenant was no longer paying rent for the rental unit. In respect of the stop

payment fees, the tenant did not provide evidence that shows that he attempted to secure return of the cheques from the landlord. The amount of the loss or damage claimed by the tenant is subject to the tenant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act. As the tenant did not mitigate his loss, the tenant is not entitled to recover for the stop payment fees.

The tenant was the only lawful tenant under the First Tenancy Agreement. The tenant delivered the entire security deposit to the landlord. The security deposit provisions in section 38 do not provide for transferring security deposits to a third party or repayment to a party that actually furnished the security deposit to the tenant (for example, a bank or other lender). On this basis, the landlord was not entitled to refuse to repay the tenant's security deposit to him as it did by way of the agent's email dated 31 January 2014. If there is a claim by HS over the funds that became the security deposit, that dispute is between HS and the tenant.

The tenant has not furnished his forwarding address to the landlord. On this basis, the obligation to return the tenant's security deposit pursuant to subsection 38(1) of the Act has not yet been triggered. On this basis, the tenant is not entitled to compensation pursuant to subsection 38(6) of the Act.

Residential Tenancy Policy Guideline, "17. Security Deposit and Set off" provides guidance in this situation:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

There is no evidence before me that indicates that the tenant's right to the security deposit has been extinguished. As there is a balance in the amount of \$1,400.00, I order that the balance of the tenant's security deposit shall be returned to the tenant.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$4,200.00 under the following terms:

Item	Amount
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Compensation for Breach of First Tenancy Agreement	\$2,800.00
Return of Security Deposit	1,400.00
Total Monetary Order	\$4,200.00

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: January 05, 2016

Residential Tenancy Branch

