



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, PSF, RPP, LRE, LAT

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenants seeking an order cancelling a notice to end the tenancy for cause; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; a order that the landlord comply with the *Act*, regulation or tenancy agreement; an order that the landlord provide services or facilities required by the tenancy agreement or the law; an order that the landlord return the tenants' personal property; an order limiting or setting conditions on the landlord's right to enter the rental unit and for an order permitting the tenants to change the locks to the rental unit.

The landlord and both tenants attended the hearing and both parties were assisted by Advocates. Each of the parties gave affirmed testimony and the parties or their Advocates were given the opportunity to question each other. The tenants also had 2 witnesses available, however neither was called to testify.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing the tenants advised that they have already changed the locks to the rental unit and withdraw that portion of the application.

Further, the parties agreed that the tenancy will end on November 30, 2017 and the landlord will have an Order of Possession effective at 1:00 p.m. that date.

The parties also agreed that the landlord will not enter the rental unit except as provided by the *Residential Tenancy Act*, which states:

- 29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;
 - (e) the tenant has abandoned the rental unit;
 - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Have the tenants established that the landlord should be ordered to provide services or facilities required by the tenancy agreement or law?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?
- Have the tenants established that the landlord should be ordered to return the tenants' personal property?

Background and Evidence

The first tenant (CG) testified that this tenancy began on July 15, 2017 and the tenants still reside in the rental unit. Rent in the amount of \$800.00 per month is payable on the 1st day of each month. The tenants are currently in arrears of rent the sum of \$1,600.00 for October and November, 2017. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$200.00. There is no written tenancy agreement, and the rental unit is a 2 bedroom apartment, and the landlord lives in a suite above the rental unit.

The parties had agreed that laundry facilities were included in the rent, and the landlord also gave the tenants a Wi-Fi password so the tenants could access the internet, but about 2 days after the landlord was served with the hearing package for this hearing, Wi-Fi no longer works.

The tenant had 2 loads of laundry in the laundry room and the landlord admitted to police that the landlord took all of the laundry because the tenants weren't allowed to use the facilities. Some of the tenants' clothing was returned to the tenants, but the tenant is still missing a skirt, a pair of pants, a couple of shirts and 3 pairs of underwear. The landlord was charged with theft, and had taken 2 bags of laundry and only returned 1 of them to the tenants. The tenant is a bigger lady and it's hard to find clothing in her size, and the tenant wants her clothing back or for the landlord to reimburse the cost at \$300.00. Also, the tenant cannot find clothing that fits the tenant in the local community so has to travel to get to a larger center and claims an undetermined amount for travel costs.

The tenant further testified that the tenants completed 37 hours of yard work for the landlord and claims \$25.00 per hour, or \$925.00.

Also, at least 4 times the tenant had to hire a person to have the pilot light on the hot water tank turned back on and was charged a fee of \$50.00 each time. The landlord had turned off the pilot light, and the tenant heard the landlord in that room. The first time it happened, Fortis lit it but wouldn't do it again. The tenants were without hot water for several days and cannot do it themselves, and the tenant had to hire someone 4 times, and the tenants claim \$200.00.

The tenants also claim \$600.00 for money that went missing out of the rental unit the day after the tenants moved in. The parties had dinner together on the deck and the landlord went to the bathroom and a couple of hours later the tenant noticed \$350.00 was gone, then another \$250.00 went missing. About 2 weeks after moving in, the tenant's purse was sitting on the kitchen table while the tenant was sleeping in the morning. When the tenant grabbed her purse, half of her money was gone.

The tenants also claim damages for the landlord defaming the character of the tenants by lying on Facebook saying the tenants haven't paid rent and now the tenants have to leave the area, not being able to find a place to live locally.

The tenants also claim damages for pain and suffering, and the tenant testified that she has to pay for counselling due to a month and a half of the landlord terrorizing the tenants to the tenant's breaking point. The landlord lied to police, who removed the tenants at 4:00 a.m. The tenants had to sleep outside in the cold about 2 weeks ago. The tenant has a bad back and suffered. The tenant doesn't know what the cost will be for counselling but suggests \$10,000.00.

The tenant was out of town for 5 days for a doctor appointment, and the landlord changed the locks to the rental unit. The tenants had to break in. The landlord also had the tenant's vehicle towed away which the tenants cannot locate anywhere. The vehicle and contents are valued at \$550.00.

The tenant further testified that the tenants paid rent for September, 2017 9 days early and the landlord spent it. The next day the landlord asked the tenants for 3 months of rent in advance, and told the tenants that if they didn't move out, the landlord would make their lives hard every day until they did. The landlord shoved the tenant, made false calls to police, threatened to bash the tenants' faces in, and has been charged with uttering threats.

The second tenant (AP) testified that the tenants called all the towing companies and the tenants' car was not towed by any of them. The car is now missing and the landlord likely took cash for it.

Some of the tenant's clothes were missing after the landlord emptied the washer and dryer –a couple of shirts and a couple of pants, but the tenant doesn't really care. However jewelry also went missing, such as necklaces and bracelets.

The landlord continually refused to give rent receipts, and told the tenant she would take \$200.00 off the rent for work that the tenant did for the first month of the tenancy and an additional \$100.00 per month for each following month for maintaining the yard, grass, weeding, and cleaning up. The tenant did many things, and at the last minute the landlord said the tenant wasn't doing a good enough job. No discount was given from the rent.

The tenant did not steal money from his room-mate's purse and didn't have the chance to do so. The landlord was the only one in the room when the money went missing in July, 2017.

The landlord testified that she removed the tenants' clothing from the dryer because the tenants had already overloaded both machines. The landlord put the wet laundry in a garbage bag. Police went with the landlord when the landlord dropped the clothing on the tenants' doorstep.

The landlord denies turning off the pilot light to the hot water tank and testified that she doesn't know how to do so.

The tenants were clearing out the apartment for the landlord at the beginning of the tenancy, but sold items, including the landlord's belongings and those of the landlord's daughter. The tenant's testimony of a necklace is questionable, however the landlord's jewelry was sold, which was frightening to the landlord.

The landlord denies stealing any money from the tenants or their clothing, and testified that the clothing would not fit the landlord.

Analysis

Firstly, where a party makes a monetary claim against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate the damage or loss suffered.

In this case, the tenants claim:

- \$300.00 for missing clothing;
- \$925.00 for 37 hours of yard work;
- \$200.00 for the cost of having the pilot light lit on the hot water tank;
- \$600.00 for missing cash;
- \$10,000.00 for counselling;
- \$550.00 for the missing car and contents;
- an undetermined amount for loss of Wi-Fi; travel costs to a larger centre to replace clothing; defamation of character, pain and suffering.

The landlord denies keeping any clothing or turning off the pilot light on the hot water tank. The landlord also denies taking any cash from the tenant's purse. Where it boils down to one person's word over another, the monetary claim has not been set out, and I dismiss the tenants' application with respect to those items and the claim for travel to a larger centre to purchase clothing.

I am not satisfied that the landlord has any belongings of the tenants and I dismiss the tenants' application for an order that the landlord return the tenants' personal property.

I have no reason to disbelieve that the tenants maintained the yard, however labor, even if for a landlord of the tenants, is not recoverable under the *Residential Tenancy Act*. The same applies to defamation of character and I dismiss the tenants' claims for those items.

The tenants have not provided any evidence of the costs for counselling or any clinical evidence that counselling is necessary and I dismiss the tenants' \$10,000.00 claim, and the tenants' claim for pain and suffering.

The tenants have not provided any evidence to support the cost of losing Wi-Fi and I dismiss that claim.

The landlord admits removing the tenants' clothing from the laundry facilities, and did not deny having the tenants' car towed away, and I accept the testimony of both tenants that the local towing companies did not tow it. Although I am not entirely satisfied of the value, the *Residential Tenancy Act* allows me to grant a nominal amount as an acknowledgement of a wrong-doing. The tenants did not specify what the contents of the vehicle were, and I find that a nominal amount of \$200.00 is justified in the circumstances.

The parties have agreed that the tenancy will end on November 30, 2017, and I order the landlord to provide services and facilities required by law until that time.

The first tenant testified that there are arrears of rent, however I have no application from the landlord before me, and I decline to make any findings of fact or law with respect to unpaid rent.

Conclusion

For the reasons set out above, and by consent, I hereby grant an Order of Possession in favour of the landlord effective November 30, 2017 at 1:00 p.m. and the tenancy will end at that time.

I further order, by consent, that the landlord comply with Section 27 of the *Residential Tenancy Act* and refrain from entering the rental unit except in accordance with that Section until the tenancy has ended.

I further order the landlord to provide services and facilities required by law until the tenancy has ended.

I further grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$200.00.

This order is final and binding and may be enforced.

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 10, 2017

Residential Tenancy Branch