Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD RPP

Introduction

This hearing was scheduled to deal with a tenant's application for a Monetary Order for damages or loss under the Act, regulations or tenancy agreement, and return of double the security deposit; as well as, an order for the return of personal property. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The hearing was held over two dates and an Interim Decision was issued on November 21, 2019. The Interim Decision should be read in conjunction with this decision.

As seen in the Interim Decision, I had ordered and authorized service of documents upon each other during the period of adjournment and at the commencement of the reconvened hearing, I explored whether this was accomplished. The tenant testified that he sent his Monetary Order worksheet and details of dispute to the landlord and the landlord's lawyer via registered mail on January 13, 2020. The tenant explained that he did not receive the Interim Decision from the Residential Tenancy Branch until December 31, 2019 because it was not properly addressed to him. The tenant's outreach worker confirmed that the envelope containing the Interim Decision was devoid of the tenant's name and the mailing address is used by many people using the shelter which resulted in a delay in getting it to the tenant. The outreach worker was agreeable to sending an image of the envelope to support this position; however, I accepted her verbal testimony. In this circumstance, I was prepared to accept the tenant met his burden to serve the landlord as ordered. The landlord's spouse and the landlord's lawyer confirmed receipt of the tenant's registered mail on January 16, 2020 and January 21, 2020 respectively.

The landlord prepared a written submission subsequent to receiving the tenant's details of dispute and Monetary Order worksheet and sent it to the tenant on January 31, 2020. The tenant confirmed receipt of the submission but pointed out that the appendices were not attached. The landlord's lawyer stated the appendices were sent to the tenant in the package delivered to him prior to the hearing date of November 21, 2020. The tenant acknowledged he had received a package from the landlord's lawyer before the first hearing date.

I was reasonably satisfied the parties were in receipt of the documents submitted to me and I admitted them into evidence and considered them in making this decision.

On another procedural note, the tenant had indicated he was seeking an order for return of personal property in filing his Application for Dispute Resolution, namely six bags of empty water bottles. The landlord submitted the water bottles were taken to a recycler. As such, I did not consider the tenant's request for an order for return of personal property further and the tenant's remedy for loss of property is monetary. The tenant had included a monetary claim related to the loss of water bottles and I have considered all of the tenant's monetary claims in this decision.

The hearing process was explained to the parties, the parties were permitted the opportunity to ask questions about the process and the parties were affirmed.

Finally, it should be noted that I was provided a significant amount of evidence, in the form of documentation and oral testimony, as well as written and oral submissions and arguments. I have considered everything before me; however, with a view to brevity in writing this decision, I have only summarized the party's respective positions and referenced the most relevant and material evidence I have relied upon in making this decision.

Issue(s) to be Decided

1. Has the tenant established an entitlement to compensation from the landlord for damages or loss under the Act, regulations or tenancy agreement in the amounts claimed?
2. Is the tenant entitled to return of double the security deposit?

Background and Evidence

The tenancy started on July 1, 2016 on a month to month basis. The tenant paid a security deposit of $500.00 and was required to pay rent of $1,000.00 on the first day of every month. A move-in inspection report was prepared and signed by the parties.

The tenant gave a written notice to end tenancy at the end of June 2017 to be effective July 31, 2017. The landlord did not invite the tenant to participate in a move out inspection.

Below, I have summarized the tenant's claims and the landlord's responses.

Return of rent paid between July 1, 2016 and July 31, 2017: $11,700.00

The tenant submitted that a small portion of his monthly rent was subsidized, and he paid $11,700.00 to the landlord during the 13 month tenancy. The tenant seeks return of the sum he paid to the landlord throughout the tenancy. The tenant pointed to the following issues as being the basis for this compensation:

1. Non-potable water

The tenant submitted that shortly after the tenancy started, he noticed the water was discoloured and smelled. He testified he raised it to the landlord's attention, but the landlord did nothing about it. The tenant stated he did not pursue the matter further and that he was willing to let it go until he was annoyed that the landlord entered his unit and took his "empties" in June 2017. The tenant arranged for a water inspector to attend the property to test the water. The water inspector arrived at the property on July 17, 2017 for this purpose and was met by the landlord. The water inspector did not obtain a water sample and impressed upon the landlord to ensure the water is potable since the property is tenanted.

The landlord testified that the tenant did not raise an issue with the water being non-potable and the tenant stated told him at the start of the tenancy that he drank bottled water anyways. The landlord submitted that the property is serviced by well water and it was tested in 2015 and again in 2019 and it was found to be very potable. The landlord acknowledged that the water has a high manganese count which causes it to be coloured and smell but that does not affect its safety. The landlord produced the two water test results as evidence.

2. Mould

The tenant submitted that the rental unit was contaminated by mould. The tenant stated that he noticed the mould during the move-in inspection but that the landlord would not reflect it on the move-in inspection report. The tenant claims that he raised the issue of mould to the landlord a week or two after the tenancy started and the landlord's response was that the tenant could move out if he wanted to.

The tenant acknowledged that he was going to let the mould issue go until he returned home from being away in May 2017 and he was "hit" by the mould and then when the landlord entered his unit without permission in June 2017 and took his "empties".

The tenant explained that he did not raise the issue of mould again during his tenancy because he did not have any other options to move out.

The tenant obtained a mould report in June 2017 but did not share it with the landlord until he served the landlord with evidence for his monetary claims in 2019.

The landlord denied the rental unit was mouldy at the move-in inspection or that the tenant sked for it to be noted on the move-in inspection. The landlord denied the tenant raised the issue of mould shortly after the tenancy started. The landlord testified that the first time the tenant spoke of mould was at the end of the tenancy when the tenant stated he had a mould report and he would be taking him to arbitration. The landlord requested the mould report from the tenant in August 2017 and he was not provided a copy until the tenant served him with evidence for this proceeding in 2019.

The landlord testified that if the tenant had raised the issue of mould, he would have addressed it, just as he did when the tenant of a different rental unit raised an issue of mould that resulted from a leaky roof.

The landlord acknowledged there was mould observed near the end of the tenancy, but the landlord attributed it to the tenant's lack of housekeeping and storing of a large amount of possessions in the rental unit that the landlord described as being garbage.

3. The landlord entered the unit unlawfully and took possession of the unit before the tenancy ended.

The tenant submitted that in early or mid-June 2017 the landlord entered his unit and removed garbage and his empties. The tenant submitted that he had 6 or 7 large

plastic bags of empty 1 gallon water bottles that he intended to return for the deposit. The tenant estimated the value of the empties to be $120.00 and the landlord did not have the right to enter or to take his possessions.

The tenant also submitted that that he had been out of town working from July 11, 2017onwards and he arranged for cleaners to come to his unit on July 13, 2017 and he had enlisted the help of some men to come remove his possessions before his tenancy was set to end July 31, 2017 although a firm date had not been set.

The tenant submitted that his cleaners told him the landlord was present when they were cleaning. Also, the water inspector wrote an email in January 2019 describing the landlord as having possession of the rental unit when he attended the property on July 17, 2017.

The landlord acknowledged entering the rental unit in early to mid-June 2017 to set rat traps under an oral agreement with the tenant and while he was in there he noticed there was a significant amount of garbage and recyclables that he considered to be an attractant to the rats so he removed these items and disposed of them. The landlord testified that he did not cash in the empties but that there were three large bags of water bottles that he estimated to have a value of $20.00 to $30.00.

The landlord acknowledged entering the unit on July 13, 2017 when the cleaners were there because the power had been turned off and he went in the unit to turn it on for them.

The landlord acknowledged finding a key left out for the water inspector on or about August 5, 2017 and denied taking possession of the rental unit until August 1, 2017.

The landlord also argued that an “emergency” situation entitled him to enter the rental unit to deal with accumulated garbage that was causing damage or had potential to cause damage.

Double security deposit: $1,000.00

The tenant submitted that he did not receive a refund of the security deposit and he did not authorize any deductions from his deposit. As for providing a forwarding address to the landlord, the tenant acknowledged he did not give one to the landlord. Rather, he gave the landlord an email address and requested a refund via e-transfer.

The landlord confirmed the above to be accurate.

Moving expenses: $2,000.00

The tenant sought $2,000.00 in moving expenses in making his Application for Dispute Resolution and indicated he would provide receipts but none where provided. The tenant stated he could not locate the receipts.

I dismissed this claim summarily without hearing a response form the landlord simply because the amount claimed lacked any verification or corroboration.

Storage expenses: $829.90

The tenant submitted that he stored two automobiles and other possessions in a total of three storage units from August 2017 through October 2017 and he seeks to recover the storage fees from the landlord. The tenant submitted that he went to work in another part of the province from July 2017 through October 2017 and he needed somewhere to store his possessions since he ended the tenancy.

As for the reason for ending the tenancy, the tenant testified that the rental unit was not liveable due to the mould; however, in the written notice to end tenancy he gave the landlord he did not make mention of mould. Rather, he merely indicated he was giving his one month of notice. Nor, did the tenant explain how the presence of mould in the rental unit would require storage of two automobiles.

I was unsatisfied the tenant sufficiently established a basis for holding the landlord responsible to pay for his storage fees for months after the tenancy ended and I dismissed this claim without hearing a response from the landlord.

Cleaning expenses: $609.00

The tenant seeks to recover the amounts he paid the cleaners to clean the rental unit in May 2017 and in July 2017.

Under the Act, tenants are required to clean a rental unit periodically during a tenancy and at the end of a tenancy and the tenant did not establish a basis for holding the landlord responsible for paying for the cleaning expenses. As such, I dismissed this claim summarily without hearing the landlord’s response.

Mould report: $200.00

The tenant seeks to recover $200.00 he paid for the mould testing and the mould report. I dismissed this claim summarily as the tenant had acknowledged he did not ask the landlord to inspect for mould or come forward to the Residential Tenancy Branch to request mould testing or repair orders to address the mould during his tenancy.

Replacement of bed and recliner: $3,600.00

The tenant submitted that he left a bed and recliner in the rental unit to be picked up before the end of July 2017, and he would have had them taken to the dump because they was contaminated by mould; however, the landlord took possession of the unit and interfered with his ability to remove these items. The tenant submitted that the landlord interfered with his ability to remove these items by taking away the key to the rental unit that he left out for the cleaners, movers and water inspector.

The tenant obtained prices for a new bed and recliner totalling $3,600.00 and he seeks compensation from the landlord in this amount.

The tenant did not have any photographs or receipts for the items disposed of by the landlord. The tenant stated he purchased them from a furniture store a couple of years prior but then he also stated he could not recall which store because it was so long ago.

The landlord submitted the tenant left an old and stained bed and recliner, that the landlord estimated to be 20 years old, in the unit and it was still there as of August 1, 2017 so he disposed of the items since he considered them abandoned and worth less than $500.00.

Loss of “empties”: $120.00

The tenant placed a value of $120.00 on the bags of empties the landlord removed form the rental unit in June 2017. The tenant submitted that he would save up the empties and return them for money and the landlord did not have the right to take that away from him.

The landlord placed a value of $20.00 to $30.00 on the empties he took from the rental unit and pointed to photographs that show three bags of empties. The landlord stated he dropped the empties off at a recycling depot, but he did not get any money for them.

Cost to photocopy and scan documents: $31.25

The tenant seeks to recover the costs to photocopy and prepare and send documents pertaining to this dispute. Such costs are not compensable under the Act and I dismissed this claim summarily.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. 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.

In this case, the tenant is the applicant and bears the burden of proof. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

Return of rent paid for 13 months

With respect to lack of potable water at the rental unit, I find the tenant failed to prove the water was non-potable. It was undisputed that the water was discoloured and had an odour; however, the landlord produced two test results in support of his position the water was potable. If the tenant had concerns over the potability of the water, I would expect the tenant to raise the issue with the landlord and if the tenant does not receive a satisfactory response from the landlord the tenant would pursue the issue further by making an Application for Dispute Resolution during the tenancy to seek further remedy. If the tenant chose to not pursue the issue and drink bottled water rather than the well water because of the colour or odor that is his choice, but I do not see a basis to award him compensation for this issue.

As for the presence of mould, there was evidence put forth to me by both parties that there was mould in the later months of tenancy and both parties pointed to the other party as being responsible for the formation of mould. There was a dispute as to whether there was mould at the start of the tenancy. The tenant claims to have raised the issue of mould to the landlord at the start of the tenancy and this was denied by the landlord and not supported by any documentation. In any event, I find it is unnecessary to make a determination as to who or what caused the mould since the tenant failed to demonstrate he took reasonable steps to mitigate losses attributable to mould.

Where a tenant becomes aware of a repair issue, I expect the tenant would raise it to the landlord's attention and give the landlord a reasonable amount of time to investigate and take appropriate action. If the landlord does not take reasonable steps after becoming aware of the issue, I would expect the tenant to pursue the matter further by filing an Application for Dispute Resolution in a timely manner to seek orders for an inspection, mould testing and appropriate repairs. The tenant himself stated he was willing to let the matter go until he became annoyed by another issue. Even after the tenant had the unit tested for mould, he did not raise the issue again or show the landlord the mould report until after the tenancy was over. Therefore, I find the tenant failed to take reasonable steps to mitigate losses with respect to the mould issue and I do not award the tenant a rent abatement for mould.

As for the tenant's assertion that the landlord unlawfully entered the unit in June 2017, when his empties were taken, I heard disputed oral testimony that the parties had agreed the landlord would go in to the unit so as to deal with rats; however, I find it am satisfied the landlord breached the tenant's right to reasonable privacy by going through his possessions, even if the landlord considered them to be garbage.

Upon review of the email exchange between the parties on July 13, 2017 I note the landlord once again reflected that he was cleaning the back area of the tenant's unit and informed the tenant where he placed the tenant's papers. Even if the landlord had an agreement to deal with rats, the landlord did not have a right to clean and move or go through the tenant's possessions.

Under section 28 of the Act, a tenant is entitled to "quiet enjoyment" of the rental unit and quiet enjoyment includes the right to exclusive possession and reasonable privacy. In going through the tenant's possessions, I find there was a breach of reasonable privacy by the landlord. For this I award the tenant compensation equivalent to one day's rent for each of the two occasions I am satisfied the landlord went into his unit and

was going through his possessions. Therefore, I award the tenant $66.66 [$1,000 / 30 days = $33.33 x 2] to reflect the loss of privacy on those days.

The tenant asserted that the landlord took possession of the rental unit in mid-July 2017; however, I find the evidence in support of that position is lacking. The tenant stated the house cleaners told him so; however, that is hearsay evidence and it is inconsistent with the landlord's emails to the tenant describing his cleaning of the back room to which the tenant responded to stop interfering with the tenant's intentions to deal with his possessions and the landlord assurance he would. In another email the landlord wrote on August 1, 2017 the landlord points out that there are still possessions of the tenants at the rental unit which is inconsistent with the tenant's position the landlord took possession of the unit and disposed of his possessions in Jul7 2017. The tenant pointed to an email written by the water inspector in January 2019; however, I have given little weight to an email written 1.5 years after the fact in comparison to emails exchanged between the parties at the relevant time. It is unclear to me, without testimony or an affidavit of the water inspector, how the water inspector made the determination that the landlord had taken possession of the rental unit on July 17, 2017 and how he could recall particulars with accuracy 2.5 years later. Therefore, I find I am not satisfied that the landlord took possession of the rental unit prior to August 1, 2017 and I find it appropriate to limit the tenant's award for compensation to the two dates where it was demonstrated the landlord entered the unit and was going through the tenant's possessions.

Double security deposit

Section 39 of the Act provides a time limit for a tenant to provide the landlord with a forwarding address, in writing. If the tenant fails to do so within one year of the tenancy ending, the tenant loses the right to the return of the security deposit and the landlord may keep it. There are no exceptions to this provision. In this case, the tenant acknowledged that he did not give the landlord a forwarding address. An email address is insufficient as the purpose of giving a forwarding address is so that the landlord may serve the tenant if the landlord wishes to make a claim against the security deposit. Therefore, I find the tenant extinguished his right to the return of the security deposit and his request for its return, or doubling of the deposit, is dismissed.

Below, I have reproduced section 39 of the Act.

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Moving expenses

The tenant indicated he had receipts for moving expenses but stated he could not find them. The tenant did not provide any other particulars such as who or when he paid movers or provide any other corroborating evidence of such expenses. Therefore, I find the tenant did not meet his burden to provide verification of the amount claimed and I dismiss the claim for moving expenses.

Storage expenses

The tenant provided documentation to demonstrate how much he paid for three storage units for the months of August 2017 through October 2017; however, I find there to be insufficient basis under the Act to hold the landlord responsible for these costs. The tenant stated he had to store his possessions because he was away working during that time and he had ended the tenancy. The tenant submitted that he ended the tenancy due to mould; however, the notice to end tenancy did not indicate that. Further, as I have found previously, the tenant did not take steps to mitigate mould.

When a tenancy is ended a tenant is required to remove their possessions and it is the tenant's responsibility to accommodate his possessions. Typically, when a tenant relocates to new living accommodation they take their possessions to that location and they are stored as part of that arrangement. In this case, the tenant left town for work and did not take his possessions with him and it is perfectly reasonable that he paid to store his possessions; however, the tenant's life choices as to where he works and what he does with his possessions are his decision for which he must bear the cost.

In light of the above, I find the tenant did not meet his burden to prove that the landlord is responsible to pay for the storage of his possessions after the tenant ended his tenancy.

Cleaning expenses

Section 32 of the Act requires a tenant to maintain reasonable sanitary standards during the tenancy and section 37 of the Act requires a tenant to leave a rental unit reasonably clean at the end of the tenancy. Tenants usually clean their rental units themselves at regular intervals or hire cleaners. The tenant hired cleaners nearing the end of the tenancy and I find this is an expense of the tenant as part of his obligations under sections 32 and 37. Therefore, I deny the tenant's request to hold the landlord responsible to pay for his cleaning services.

Mould report

As explained earlier in this decision, I have found the tenant failed to take steps available to him to have the landlord address an issue of mould in the rental unit by requesting the landlord do so and if the landlord refused to do so by making an Application for Dispute Resolution to seek further remedy from an Arbitrator. The tenant took it upon himself to get mould testing and a report nearing the end of the tenancy and then waited to share it with the landlord until the tenancy was over for approximately two years. I am of the view the mould report was obtained in an effort to build this monetary claim rather than seek mould remediation and I make no award to the tenant to recover the cost of the mould report.

Replacement of bed and recliner

It was undisputed that the landlord disposed of the tenant's bed and recliner. The landlord provided photographs of these items and submitted that they were junk or had a value of less than $500.00. The tenant provided unclear and varying submissions as to the age of these items and did not provide documentation or particulars to demonstrate how much they cost when they were purchased. Upon review of the photographs taken by the landlord, I find I accept the landlord's position that the items were old and had little to no value, and certainly nowhere near $3,600.00 when they there disposed of in 2017. Therefore, I make no award to the tenant for the replacement value of an old bed and recliner.

Loss of "empties"

It is undisputed that the landlord took empties from the rental unit during the tenancy. I can find no basis for the landlord to do so under the Act and the tenant did not authorize this. The issue under dispute is the value of the empties. The tenant stated there were

6 – 7 bags worth approximately $120.00; whereas, the landlord stated there were three bags worth approximately $20.00 to $30.00. The landlord provided a photograph and three bags of empties are visible. Therefore, I find the landlord's position to be more likely and I award the tenant compensation of $30.00 for the loss of these items at the hands of the landlord.

Monetary Order

The tenant has satisfied me that he is entitled to some compensation for breach of quiet enjoyment and loss of possessions. However, the balance of the tenant's claims against the landlord are dismissed without leave. In keeping with my findings above, I provide the tenant with a Monetary Order totalling $96.66 calculated as $66.66 for breach of quiet enjoyment plus $30.00 for loss of possessions.

Conclusion

The tenant has been awarded a total of $99.99 and the balance of the tenant's claims are dismissed without leave to reapply. The tenant is provided a Monetary Order in the amount of $96.66 to serve and enforce upon the landlord.

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: February 20, 2020

Residential Tenancy Branch