



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNETC, MNSD, RPP, FFT

Introduction

This hearing was scheduled to convene at 1:30 p.m. on July 29, 2021 concerning an application made by the tenant seeking:

- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- a monetary order for compensation related to a Notice to End Tenancy for Landlord's Use of Property;
- a monetary order for recovery of the security deposit or pet damage deposit;
- an order that the landlord return the tenant's personal property; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord joined the call.

The tenant testified that the landlord was served with the hearing package by email on May 31, 2021 and was permitted to provide proof of such service after the hearing concluded. I now have a copy of an email dated May 31, 2021 addressed to the landlord with 3 attachments. I have compared it to other emails addressed to the landlord, including an accepted interac e-transfer, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act* and the regulations.

All evidence of the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for replacement of personal items, moving expenses and damages?
- Has the tenant established a monetary claim as against the landlord for compensation related to a Notice to End the Tenancy for Landlord's Use of Property?
- Has the tenant established a monetary claim as against the landlord for return of all or part of the security deposit?
- Has the tenant established that the landlord should be ordered to return the tenant's personal property?

Background and Evidence

The tenant testified that this fixed term tenancy began on October 1, 2019. A copy of the tenancy agreement has been provided for this hearing which indicates that the fixed term also expired on October 1, 2019, however the tenant testified that it was supposed to be for 1 year and then revert to a month-to-month tenancy. The tenancy ultimately ended on June 11, 2020. Rent in the amount of \$4,000.00 was payable on the 1st day of each month. Prior to the commencement of the tenancy the landlord collected a security deposit in the amount of \$2,000.00 and no pet damage deposit was collected. The rental unit is a condominium apartment in a strata complex.

During the tenancy the landlord permitted the tenant to rent the rental unit on Air BNB, but wanted a portion of the rent collected and required the tenant to pay another \$2,000.00 security deposit. A copy of an e-transfer in that amount dated March 9, 2020 has also been provided as evidence for this hearing.

A move-in condition inspection report was completed by the parties at the beginning of the tenancy, however there was no move-out condition inspection at the end of the tenancy; the tenant was forced out.

On June 9, 2020 the tenant returned home to find another tenant in the rental unit. The tenant's building fob didn't work and the concierge told the tenant that the landlord had provided a fraudulent Form K to the strata and back-dated it to October 30, 2019. Copies of the tenant's Form K and the fraudulent Form K have been provided for this hearing. The landlord locked the tenant out, kept the tenant's furniture and belongings

and re-rented the rental unit and collected rent from the new tenant, then blocked the tenant's move. The tenant had to book 2 moves and still doesn't have any of his personal effects. Police also attended to ensure that nothing was damaged, and a copy of a police report has been provided for this hearing, redacted to protect the identity of the new tenant. The police also provided the Form Ks to the tenant.

The landlord applied for a monetary order for unpaid rent, but did not apply for an Order of Possession. A hearing was held on October 5, 2020 during which the Arbitrator would not allow the tenant to set out his defence and ordered the tenant to pay about \$11,100.00. The tenant does not know when the new tenant moved in or what amount of rent the landlord collected from that tenant in addition to the unpaid rent claim made. The landlord also made the tenant pay for building fobs.

The tenant provided a file number of the landlord's application, and I advised the tenant that I would be reviewing the Decision to ensure that I did not make any findings or orders that had already been adjudicated upon.

The tenant has also provided a Monetary Order Worksheet setting out the following claims, totaling \$17,869.92:

- \$4,000.00 as recovery of the security deposits;
- \$3,727.50 for moving expenses;
- \$10,042.42 for personal items; and
- \$9,100.00 for damages.

The Worksheet contains a typing error indicating that the amount claimed for personal items is \$1,042.42. The amount claimed for damages is the amount that's on the tenant's credit report due to the landlord's claim against the tenant. An Invoice has been provided for this hearing for moving expenses which indicates 2 dates on June 9 and June 11, 2020, including storage fees.

The tenant provided the landlord with a forwarding address in an email dated June 10, 2020 and a copy has been provided for this hearing.

Analysis

I have reviewed all of the evidentiary material and the Decision following the October 5, 2020 hearing. The Decision states that the tenant's evidence wasn't provided to the landlord until the day of the hearing, and that evidence was not considered.

Evidence that I found particularly interesting are the police report and 2 different Form K's that the tenant testified was provided to him by police. The Form K signed by the tenant is dated October 15, 2019 showing a tenancy to begin on October 8, 2019. The Form K signed by another tenant is dated October 30, 2019 showing a tenancy beginning in September, 2019, and both contain the same rental address. The tenant testified that the concierge advised the tenant that the landlord had deactivated the tenant's building fob and provided a fraudulent Form K backdating it to October 30, 2019. The police report shows that the person occupying the rental unit on June 11, 2020 admitted that he was squatting, and confirms that another Form K existed and was back-dated.

The police report also shows that movers removed furniture and belongings for the tenant, and the tenant decided to abandon what was left of his property, including clothing, kitchen appliances, cutlery and 2 beds. The movers' invoice specifies moving 3 bedroom house with 3 movers on June 9 and June 11, 2021 and storage fees for 3 months. I have compared the tenant's Monetary Order Worksheet to the police report and movers' invoice, and I am not satisfied that the tenant has established the claim of all items, and I dismiss that portion of the tenant's application.

I am satisfied, however that the tenant suffered damages as a result of the landlord's failure to comply with the *Act*. The tenant claims \$9,100.00 because that's the amount of the landlord's claim which appears on the tenant's credit report, but that's not how it works. In order to be successful in a claim for damage or loss, the tenant must satisfy the 4-part test:

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

Having found that the tenant has suffered damages as a result of the landlord's failure to comply with the law, and considering the evidentiary material showing the tenant's attempts to recover all of his items I am satisfied that the tenant is entitled to nominal damages totalling \$1,000.00.

The tenant testified in this hearing that neither the landlord nor the tenant gave a notice to end the tenancy, however, in the October 5, 2020 Decision the tenant stated that he gave written notice to end the tenancy on May 30, 2020 by text message.

The October 5, 2020 hearing puts the end of tenancy at the end of June, 2021, however the landlord has been awarded unpaid rent for the entire month, when the tenant was actually forced out on June 11, 2021. I find that the landlord has been over-compensated by \$2,533.33 ($\$4,000.00 / 30 = 133.33 \times 19 \text{ days} = \$2,533.33$).

Where a landlord requires a tenant to move out of a rental unit for landlord's use of property, the landlord is required to pay compensation to the tenant, but only if the landlord serves a notice to end the tenancy in the approved form. In this case, the landlord did not serve the tenant with a notice to end the tenancy, and the tenant is not entitled to such compensation.

The tenant did not lead any evidence, nor is there any evidentiary material to indicate what personal property the tenant wishes the landlord to return. Therefore, I dismiss that portion of the tenant's application.

I also find that since the landlord has not complied with the law, the tenant is entitled to recover the moving expenses of \$3,727.50.

A landlord may not accept more than 1 security deposit from a tenant, and I am satisfied in the evidence that the landlord collected 2 security deposits from the tenant in the amount of \$2,000.00 each. The October 5, 2020 Decision deals with one of the security deposits so that is a matter that has already been adjudicated upon. However, the Decision does not deal with the second one. A landlord must return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount.

In this case, the tenant has provided proof of payment of a second security deposit and that he provided the landlord with a forwarding address in an email dated June 10, 2020. The landlord has not returned the second security deposit and did not make a claim for it, and I find that the landlord must repay the tenant double the amount, or \$4,000.00.

In summary, I find that the tenant has established claims as against the landlord of:

- \$1,000.00 for nominal damages;
- \$2,533.33 for overpayment of rent;
- \$3,727.50 for moving expenses;
- \$4,000.00 for double the amount of the second security deposit.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

I hereby grant a monetary order in favour of the tenant as against the landlord in the amount of \$11,360.83.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$11,360.83.

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: August 06, 2021

Residential Tenancy Branch