



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant –MT, CNR, LRE, MNDC, RPP, FF, O

For the landlord – MNR, MNDC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The landlord seeks a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act and to recover the filing fee. The tenant did request more time to file his application to cancel the Notice to End Tenancy but as the landlord posted the 10 Day Notice on the tenants' door it was deemed to have been served three days after posting therefore the tenant did file his application in time. The tenant has now moved from the rental unit and therefore withdraws his application to cancel the Notice to End Tenancy for unpaid rent and for an Order to set or suspend conditions for the landlord to enter his unit. The tenant requests a Monetary Order for money owed or compensation for damage or loss under the Act, an Order for the landlord to return the tenant personal property and to recover his filing fee.

Both parties served the other with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are either party entitled to compensation for damage or loss under the *Act* and if so how much?
- Is the tenant entitled to an Order for the landlord to return his personal property?

Residential Tenancy Branch
Ministry of Housing and Social Development

- Is either party entitled to recover the filing fee from the other party for the cost of the application?
- Is the landlord entitled to a Monetary Order for loss of rental income?

Background and Evidence

This month to month tenancy started around April 01, 2005 and ended on November 12, 2009. The tenant paid \$675.00 per month in rent which was due on the 1st of each month.

The landlord testifies that he served the tenant with a One Month Notice to End Tenancy for cause on October 29, 2009 to vacate the rental unit on November 30, 2009. This Notice was posted on the tenants' door and was deemed to have been served on November 01, 2009. The landlord cited the following reasons to end the tenancy:

That the tenant has: significantly interfered with or unreasonably disturbed another tenant or the landlord; has seriously jeopardized the health, safety or lawful right of another occupant or the landlord; has put the landlords property at significant risk. The landlord testifies that the tenant visited his unit and an altercation broke out between them where the landlord believed the tenant had been drinking and threatened the landlord with his guitar swinging it at the landlord in a threatening manner. The landlord had to remove the tenant from his unit by getting him into a headlock and removing him into his own unit. This altercation was witnessed by the landlords' girlfriend and his daughter who were both party to the events and attempted to protect the landlord. During this altercation the tenant pushed the landlord against the wall which caused damage to the wall the size of the landlords back.

The landlords witness also testifies to disturbing events when the tenant entered the landlords' daughters unit uninvited and helped himself to a glass of wine, proceeded to talk in an embarrassing manner and remove some items of clothing to show off his physique. He was asked to leave the unit. The landlord claims the tenant was for the most part a reasonable person who used to socialize with him and his friends. However, he claims the tenants' behaviour is now unpredictable, violent and disturbing which has made the landlord and other tenants uncomfortable.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

The landlord served the tenant with a 10 Day Notice to End Tenancy on November 03, 2009 to vacate the unit on November 13, 2009. This notice was posted to the tenants door and was deemed to have been served on November 06, 2009. This Notice stated that the tenant had five days to pay the outstanding rent or apply to dispute the Notice or the tenancy would end on November 13, 2009. The tenant applied to dispute this Notice on November 09, 2009. However, he decided to leave the rental unit on November 12, 2009 as instructed by the 10 Day Notice. The tenant did not pay rent for November, 2009.

The landlord is also claiming \$500.00 to clean the rental unit and dispose of rubbish after the tenant had vacated the unit; \$200.00 to repair the hole and the filing fee of \$50.00.

The tenant disputes the landlords' claims he claims that an altercation did take place but the landlord assaulted him. He claims he did not threaten the landlord with a guitar but the landlord strangled the tenant and damaged his own wall by putting his foot through the wall as he attempted to gain leverage on the tenant. The tenant claims that he was not drunk however it was the landlord and his girlfriend who were drunk.

The tenant agrees that he did not pay rent for November as he was being evicted at the end of October and the landlord told him at the end of October that he had 12 days to get out. The tenant has raised some other issues that have no bearing on this hearing. The tenant claims that he has reported the landlord to the police and a pending police file is now open

The tenant seeks the return of his personal belongings that he left in the rental unit. A hidey bed which he values at \$150.00, a desk valued at \$150.00, a Futon bed valued at \$100.00, some Corning- ware and some dishes. The tenant testifies that he lost his job because he had to stay at home to prevent the landlord entering his unit and throwing his belongings out. The tenant claims \$1,500.00 a week for two weeks loss of earnings; he claims he had to pay \$100.00 to move his belongings and \$130.00 for storage of his belongings as he has not yet found another rental unit. The tenant is also claiming \$300.00 due to an excessively high phone bill due to numerous calls to the police.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. With regard to the tenants claim for money owed or compensation for damage or loss I have applied the following test:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the tenant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenants claim for compensation does not meet all of the components of the above test. The tenant has not submitted any evidence to support his claim of \$2,570.00. The tenant has not provided any receipts for moving or storage costs, for a loss of income or for additional phone costs. Therefore, this section of the tenants' application is dismissed without leave to reapply.

With regard to the tenants' application for an Order for the landlord to return his personal belongings, I find, based on the inconsistency between the tenants' evidence and the evidence of the landlord, that the tenant did abandon some personal belongings in the rental unit. However, as the tenant is deemed to have abandoned these belongings pursuant to Section 24 of the Residential Tenancy Regulations a landlord is obligated to either carry out an inventory of the items and store them in an appropriate manner pursuant to section 25 of the Regulations or

Residential Tenancy Branch
Ministry of Housing and Social Development

the landlord may dispose of the tenant abandoned belongings in a commercially reasonable manner if the landlord reasonably believes that:

- a) the property has a total market value of less than \$500.00
- b) the cost of removing, storing and selling the property would be more than the proceeds of its sale or
- c) the storage of the property would be unsanitary or unsafe.

The landlord has testified that the property had a total market value of less than \$500.00 and as such he has disposed of some of the property; however, the landlord states that some items remain in the rental unit which the tenant is free to collect. Therefore, I find that the tenant has not provided sufficient evidence to support the monetary value of his abandoned belongings and in this instance **I Order the landlord** to return the remainder of the tenants belongs to him at a pre-arranged date and time not later than December 31, 2009.

With regards to the landlords claim for money owed or compensation for damage or loss under the Act, I find I prefer the evidence of the landlord as to the altercation that took place. The landlord has provided witness statements to this altercation which supports his verbal testimony and written evidence. However, the landlord has not provided any evidence to support his monetary claim for damages to the rental unit for the repair of the wall or for the cleaning and garbage removal from the tenants' suite. If the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that the damage was caused by the tenant or for the amount of additional cleaning that the landlord states he had to do before he could re-rent the unit. As such I dismiss this section of the landlords claim without leave to reapply.

With regards to the landlords claim for unpaid rent, the tenant does not dispute that he did not pay rent for November, 2009 when it was due. Section 26 of the Act states:

Residential Tenancy Branch
Ministry of Housing and Social Development

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent on November 03, 2009. The tenant had five days to pay the rent or dispute the Notice. The tenant did dispute the Notice but has since moved out of the rental unit and continues to owe rent for November, 2009. Therefore, the landlord is entitled to recover the unpaid rent and a monetary Order has been issued to the landlord for **\$675.00**.

As both parties have only been partially successful with their claims I find they must both bear the costs of filing their own applications.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$675.00. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

The remainder of the landlords' application is dismissed without leave to reapply.

I HEREBY ORDER the landlord to return the remainder of the tenants personal belongs which remain at the rental unit by a pre-arranged date and time but no later than December 31, 2009.

The remainder of the tenants' application is dismissed without leave to reapply.

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: December 17, 2009.

Dispute Resolution Officer