

DECISION

Dispute Codes MNSD, RPP, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order and an order that the landlord return their property. Both parties participated in the conference call hearing.

Issues to be Decided

Are the tenants entitled to a monetary order as claimed?

Should the landlord be ordered to return the tenants' van?

Background and Evidence

The parties agreed that the tenancy began in September 2009 at which time a \$375.00 security deposit was paid and that the tenancy ended on May 1, 2010 pursuant to a 2 month notice to end tenancy and a mutual agreement to end tenancy which was to take effect on May 1 at 12:00 p.m. The parties further agreed that the landlord received the tenants' forwarding address in writing on May 1.

The tenants testified that late in the evening of May 1 they had not yet completed moving their belongings and the landlord demanded that they stop moving and return on Saturday, May 8 to retrieve the rest of their belongings, which included items in the freezer and a van. The tenants provided a witness, O.B., who testified that he could not recall whether the landlord had agreed on a specific date on which the tenants could return to collect the rest of their belongings. The tenants testified that the landlord contacted them on May 7 and told them they had to pick up the remainder of their belongings on May 7. The tenants were able to move all of their belongings in several loads on that date but were unable to tow the vehicle, which was uninsured. The tenants testified that they made numerous attempts to contact the landlord to gain

access to the property, which was secured by a padlocked gate, but the landlord did not return their phone calls.

The parties agreed that on May 7 the landlord arranged for the vehicle to be towed to a wrecking yard where it currently remains to be released only upon payment of towing and storage fees. The tenants argued that the landlord had agreed that they could return on May 8 to collect the van, that they were prepared to tow the van on that date and that he was obligated to keep the van until they were able to remove it. The landlord denied having told the tenants they could return on May 8 and testified that he only agreed to allow them to return sometime in the following week. The landlord denied having been contacted repeatedly by the tenants regarding the vehicle and testified that he repeatedly telephoned them requesting that they remove the vehicle. The tenants seek an order that the landlord pay the towing and storage charges and return the vehicle to them.

The tenants testified that when they left the unit on May 1 they left a significant amount of frozen pork in the freezer in the unit. When they returned on May 7, they discovered that at least 4 packages of pork steaks and pork ribs were missing, which they valued at \$100.00. The landlord denied having removed anything from the freezer. The tenants seek an order for \$100.00 for the value of the missing pork.

The tenants seek to recover an unspecified amount for aggravated damages. The tenants testified that on May 1 the landlord followed them around the rental unit throwing things, screaming about damages and generally treating them with disrespect. Although the tenants had provided the landlord with their mailing address, the landlord asked the tenants for their physical address which the tenants refused to give. The landlord carries a small knife attached to his belt and the tenants testified that the landlord's behaviour combined with the fact that he was wearing a knife, caused them considerable distress. The tenant Y.S. testified that for weeks after the end of the tenancy she lived in fear that the landlord would find where she lived and subject her to further verbal abuse. Y.S. further testified that she suffers from a nervous disorder which was aggravated by the landlord's actions. The tenants' witness, O.B., testified

that he was in the unit for approximately 15 minutes and that during this time he heard the landlord yelling about damage to the unit. The landlord denied having acted in the manner described by the tenants and testified that the tenants were abusive and confrontational. The landlord further testified that O.B. threatened to take his knife and stab him in the stomach. O.B. denied having made such a statement.

The tenants seek an order for the return of double their security deposit.

Analysis

First addressing the security deposit, section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find that the landlord received the tenant's forwarding address on May 1 and I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenants' forwarding address and is therefore liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security deposit. The landlord currently holds a security deposit of \$375.00 and is obligated under section 38 to return this amount together a further \$375.00 penalty. I award the tenants \$750.00. I note that the tenants only claimed \$650.00 in their application although they specifically claimed double their damage deposit. I accept that this was a typographical or mathematical error and find that any prejudice to the landlord is minimal as he would have known that double a \$375.00 deposit would not equal \$650.00 but \$750.00.

The tenants bear the burden of proving on the balance of probabilities that the landlord made a specific representation to them that they could return to the rental unit on May 8 to retrieve the van. I find that the tenants have not met that burden and I find that the landlord agreed to make the rental unit available to them within a week after the tenancy ended, which he did on May 7. The tenants acknowledged that they were not able to tow the van on May 7. Part 5 of the Residential Tenancy Regulations addresses the landlord's responsibility with respect to goods which have been abandoned. I find that as the vehicle was left behind after the tenants vacated the property, the landlord was

justified in treating the vehicle as abandoned pursuant to section 24(a) of the Regulation. The landlord was entitled under section 24(3) to remove the abandoned property and was obligated to store the property for at least 60 days pursuant to section 25(1). I find that as the vehicle has been stored at the wrecking yard, the landlord has met his obligations under the regulation. I find no basis on which the landlord should be ordered to return the van or pay for the towing and storage fees and accordingly I dismiss the tenants' claim. I note that there was considerable discussion over the landlord's statement to the towing company that the vehicle had been abandoned for 30 days on May 7 and as to whether the landlord had attempted to induce the towing company to lie by producing a written statement which said that the tenant had authorized the tow. These issues are irrelevant as I find that the landlord had the right to tow the vehicle.

I find that the tenants have not proven that they had a significant amount of pork in the freezer or that the landlord took any of that pork. I dismiss the claim.

Residential Tenancy Policy Guideline #16 addresses what the tenants must prove in order to establish a claim for aggravated damages.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.
- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life.

I find it more likely than not that both parties were engaged in yelling, cursing and abusive language on the date in question. I do not accept the testimony of O.B. who claimed that while the landlord was yelling the tenants tried to “laugh it off.” The parties, particularly Y.S., repeatedly interrupted each other during the hearing and spoke loudly and assertively. I find it extremely likely that a similar exchange, albeit much louder and with more colourful language, took place on May 1. I do not accept that the mere fact of the landlord having a knife attached to his belt would have caused the extreme reaction described by Y.S. None of the parties suggested that the landlord threatened to use the knife, drew the knife out of its sheath or even referred to the knife during their verbal exchange. I find that the tenants have failed to prove that the landlord engaged in willful or recklessly indifferent behavior which caused them to suffer the emotional damages they claim. The tenants’ claim is therefore dismissed.

The tenants have been partially successful in their claim and I find it appropriate to order that the landlord pay the cost of the filing fee. I award the tenants \$50.00.

Conclusion

I grant the tenants an order under section 67 for \$800.00, which represents double the security deposit and the \$50.00 filing fee paid to bring this application. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: July 13, 2010

Dispute Resolution Officer