

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that he sent his original application for dispute resolution to the landlord by registered mail on November 2, 2010. He testified that he sent a copy of his amended application to the landlord raising the amount of his requested monetary Order from \$4,974.75 to \$ 9,974.75 by registered mail on November 10, 2010. The landlord testified that she had received the tenant's application and his evidence. She confirmed that she was aware that he was seeking the amended monetary Order. I am satisfied that the tenant has served these documents to the landlord in accordance with the *Act*.

Although there was no agreement between the parties regarding the landlord's service of a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant on November 2, 2010, this point became moot when the tenant vacated the rental premises on November 19, 2010. The tenant withdrew his application to cancel the landlord's notice to end this tenancy.

The landlord testified that she incurred costs at the end of this tenancy when the tenant vacated the rental unit without providing her the keys to new locks he had installed. The landlord said that she was still in the process of completing work and obtaining receipts for the expenses she is incurring as a result of this tenancy. As this issue is not before

me, I advised her that she will need to submit her own application for dispute resolution regarding these issues.

The tenant had not vacated the rental premises when he submitted his original and amended applications for dispute resolution. For that reason, the tenant has not applied for dispute resolution regarding the return of his security deposit from the landlord, although he orally requested it at the hearing. The landlord testified that she had not yet received his forwarding address in writing. The *Act* requires the tenant to send the landlord a written request to return his security deposit in which he includes his forwarding address. As the tenant has not yet made this written request and this issue was not included in the tenant's application for dispute resolution, I make no finding regarding the tenant's oral request for a return of his security deposit.

Issues(s) to be Decided

Is the tenant entitled to a monetary Order arising out of this tenancy? Is the tenant entitled to recover his filing fee for this application from the landlord/

Background and Evidence

The tenant commenced living at the rental premises, a 3,500 square foot house on a rural property, on June 1, 2010. According to the terms of the tenancy agreement, the tenant could remain in the rental premises on a month-to-month tenancy once the fixed term tenancy agreement expired on October 31, 2010. Rent was set at \$3,000.00 per month, payable on the first of the month. The landlord testified that she continues to hold the tenant's \$1,500.00 security deposit. The landlord lives on the same property above the barn. The parties agreed that the terms of their tenancy agreement allowed the landlord to use one of the two bays in the garage, where she parked her vehicle and stored some of her belongings.

No joint move-in condition inspection was conducted, although the landlord asked the tenant to conduct his own inspection and send it to her. He completed his own detailed inspection and sent her his report, but she did not sign it, nor did she return it to him.

The tenant submitted considerable written and photographic evidence to support his claim for a monetary award, which included his claim for his loss of quiet enjoyment of the premises and his request for a reduction in rent for services and facilities that were supposed to have been included in his rent. While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here.

The tenant testified that the landlord did not properly clean the premises before he and his family moved into the rental unit in June 2010. He said that the landlord failed to provide him sole access to portions of the house, where she continued to store some of her belongings. He submitted undisputed evidence that the landlord retained one room of the house where she stored some of her belongings, requiring his family to store belongings in the dining room. The tenant also maintained that the landlord interfered with his family's quiet enjoyment of the premises on an ongoing basis, treating the home and the yard that was supposed to be his as if it were an extension of her own living area. He also maintained that the landlord failed to properly address many problems that he and his wife raised with the rental unit, including his complaints about the landlord's attendance to a rat infestation problem that he maintained was never properly addressed. He alleged that he changed the locks after the landlord entered the rental premises without notice one day and berated his family.

The tenant also maintained that he was not aware that the hydro metering for the property assigned all of the hydro costs to him, with no charge to the landlord for her portion of the property. The landlord testified that she spoke with the tenant's wife shortly after the tenants moved in to let her know that the landlord would look after all of the water utility bill in exchange for the tenant's handling the hydro charges for the property. She said that the tenant's wife told her that this was a suitable arrangement.

Analysis

Section 67 of the *Act* establishes that if loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party.

The principal aspects of my findings regarding the issues before me are set out below.

During the course of the tenancy, I find that the landlord kept some of her belongings, furniture and appliances in what the tenant reasonably believed was the rental property that he had contracted to rent. The landlord also retained sole access to one of the rooms which she retained for her sole access to storage. I am satisfied that the tenant has demonstrated to the extent necessary that part of his monthly rent included access to all portions of the rental house and the grounds that went with that tenancy. I make a monetary award in the amount of \$275.00 per month for the six-month period of the tenant's occupancy of the premises to recognize this loss of access to these portions of the rental property and for the tenant's general loss of quiet enjoyment arising out of the premises during this tenancy.

I find that the landlord did not take adequate measures to deal with the rat infestation and other problems at the beginning of this tenancy, which led to the tenant's family's loss of quiet enjoyment of the premises. I allow the tenant a monetary award of \$800.00, which provides for a reduction in his rent by \$400.00 per month for a two month period of this tenancy.

I am satisfied by the evidence presented, including the tenant's detailed move-in condition inspection report that he completed and submitted to the landlord, that the landlord did not provide the rental premises to the tenant in a clean state when the tenant moved into the rental unit. I allow the tenant a monetary award of \$300.00 to

compensate him for having to clean portions of the rental premises and conduct minor repairs that should have been completed before this tenancy commenced.

I have also considered the tenant's claim that he should not have had to pay for the landlord's portion of the hydro during this tenancy and the landlord's oral testimony regarding her conversation with the tenant's wife. In reviewing the tenancy agreement, the landlord is identified as being responsible for providing water to the tenant while the tenant is responsible for hydro. I do not accept that a plain meaning of the provision in the residential tenancy agreement requiring the tenant to pay for hydro bills would require the tenant to pay for all of the hydro to the property, including the landlord's use of hydro on her portion of the property. For that reason, I make a monetary award to the tenant for a portion of the hydro bills he paid as the only hydro account for this property during this tenancy. However, I do not accept the tenant's claim that the landlord should be responsible for 50% of the hydro bills he paid during this tenancy. During this tenancy, the landlord occupied living quarters above the barn on the property while the tenants occupied the 3,500 square foot home. I allow a monetary award to the tenant in the amount of \$300.00 to reduce the hydro costs the tenant incurred which may have been applicable to the landlord.

Since the tenant has been partially successful in this application, I allow him to recover his \$100.00 filing fee for this application from the landlord.

I make no other monetary awards in the tenant's favour and dismiss all other elements of his claim, as I find that the awards granted adequately compensate him for the problems that arose during this tenancy.

The parties agreed that the tenant did not pay any rent for November 2010. The tenant provided no evidence of having provided the landlord with a written notice to end this tenancy. He vacated the premises on November 19, 2010. Since his tenancy converted to a periodic tenancy as of November 1, 2010, I find that the tenant was responsible for paying \$3,000.00 in rent for November 2010, an amount which I deduct from the monetary award in the tenant's favour.

Conclusion

I issue a monetary Order of \$150.00 in the tenant's favour in the following terms which includes the tenant's recovery of his filing fees for this application from the landlord:

Item	Amount
Landlord's Failure to Provide Facilities Committed to at Commencement of Tenancy & Loss of Quiet Enjoyment (\$275.00 x 6 months = \$1,650.00)	\$1,650.00
Loss of Quiet Enjoyment of Rental Premises (Rat Infestation and Other Problems Identified by Tenant)	800.00
Tenant's Cleaning Costs and Condition of Rental Premises at Commencement of Tenancy	300.00
Portion of Hydro Bill Attributable to Landlord	300.00
Recovery of Filing Fee for this application	100.00
Less Unpaid November 2010 Rent	-3,000.00
Total Monetary Order	\$150.00

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. 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*.