



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNDC, MNSD, OLC, ERP, RP, LRE, RR, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking orders for the cost of emergency repairs, money owed or compensation under the Act or tenancy agreement, a return of the security deposit and interest paid to the Landlord, for orders for the Landlord to comply with the Act or tenancy agreement, to make emergency repairs for health or safety reasons or other repairs required under the Act or tenancy agreement, to suspend or set conditions on the Landlord's right to enter the rental unit, to allow the Tenant to reduce rent for services, repairs or facilities agreed upon but not provided, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing the Tenant testified that he had vacated the rental unit on January 15, 2011, and therefore, the hearing dealt with the monetary claims of the Tenant and did not with his other requests, such as for repairs or to suspend the Landlord's right to enter the rental unit.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

This tenancy began on or about August 6, 2006. At that time the Tenant paid the Landlord a security deposit of \$300.00. The rental unit is a basement suite in the residential property owned and occupied by the Landlord.

The Tenant made submissions and testified that at approximately 4:00 a.m. on December 26, 2010, the Landlord began playing music very loudly upstairs which awoke the Tenant. In a quiet passage of the music, the Tenant pounded on the wall of the rental unit and the Landlord turned the music down.

According to the submissions of the Tenant, the Landlord then came to the door of the rental unit and asked the Tenant to come in. The Tenant testified and submitted that the Landlord appeared to be intoxicated. The Landlord sat on the floor in front of the Tenant's fridge and then began to "... unload a stream of conscience...", about his personal problems. The Tenant submitted that the Landlord then began to cry and complain he had no friends.

The Tenant submits that after he attempted to console the Landlord, that the Landlord began to make disturbing comments about the Tenant's body. The Tenant testified that the Landlord then asked him if the Tenant liked his penis. The Tenant became very uncomfortable and asked the Landlord to leave. The Landlord asked to hug the Tenant goodbye, and the Tenant testified and submits that at this time the Landlord tried to put his hand under the Tenant's housecoat. The Tenant submits that he quickly ushered the Landlord out of the door of the rental unit and went back to his bed.

The Tenant submits that a few minutes passed and then the Landlord began to pound on his bedroom window. The Landlord returned to the door of the rental unit and began knocking on it to be let in again. The Tenant testified he was disturbed by and fed up with the disruption and told the Landlord to go away.

At this point the Tenant began to record the incident with a video camera in his mobile phone. The unedited video shows that the Tenant is asking the Landlord what he wants while the Landlord is outside the unit, pounding on the entry door. The Landlord continues to pound on the door and simply repeats that he wants to discuss something with the Tenant. The video records the Landlord pounding on the door until it comes off the hinges and he enters the rental unit.

The Landlord then calls out the name of a woman, who was later identified as the Landlord's wife. The Tenant explains to him that the Landlord's wife is not in the rental

unit. The Tenant escorts the Landlord throughout the rental unit showing him the bathroom and closets, indicating that no one else is in the rental unit. The Tenant testified and submits that the Landlord is under the false impression the Tenant was involved with the Landlord's wife.

The video ends at this point, with the Tenant showing the time on a clock in the rental unit as indicating 5:40 a.m.

The Tenant submits that he then left the rental unit, as it was cold and lacked security without the door, and he stayed at his girlfriend's residence.

The following morning the Tenant returned to the rental unit. He submits that when he returned the Landlord and his wife were repairing the door to the rental unit. The Tenant noticed that the cover over his motorcycle was torn, and when he examined the motorcycle he found a scratch and a dent on the fender under the tear. The Tenant testified that the motorcycle was damaged by Landlord handling the door from the rental unit.

The Tenant wrote a note to the Landlord explaining the damages and asked for compensation, which was entered in evidence.

The Landlord gave a note to the Tenant which was also entered in evidence. The note from the Landlord states,

“... I would like nothing better than to put this behind us and move on. When you have a chance could you show me where exactly the damage is and where you bought your tarp.”

[Reproduced as written.]

The Tenant received an estimate of \$889.11, for replacement of the motorcycle cover and the fender. When he requested the Landlord pay for these repairs the Landlord refused to do so. The Landlord wrote another note to the Tenant that he was not going to repair a fender on a 2006 motorcycle, which was entered in evidence.

The Tenant filed his claim against the Landlord on December 30, 2010. The Tenant claims \$889.11 for the motorcycle and cover damages, \$300.00 for the return of the security deposit, a reduction in rent for January 2011, and to recover his filing fee. In support of the claims the Tenant had entered into evidence an estimate for \$889.11 from a motorcycle repair shop.

In evidence, the Landlord provided one document, a 10 day Notice to End Tenancy, which he served on the Tenant for non-payment of January 2011 rent. I note that the Landlord submitted this evidence late, and therefore, it is inadmissible under the rules of procedure.

Nevertheless, both parties agree that the Tenant did not pay the January 2011 rent and that the Tenant vacated the rental unit on January 15, 2011.

The Landlord testified that on the morning of December 26, 2010, a water line burst. He testified that the only way to cut off the water was to enter the rental unit. He testified he could not find a key to the rental unit. The Landlord testified he tried to wake up the Tenant by knocking on the bedroom window and when he did not wake up he had to break down the door.

The Landlord does not deny damaging the Tenant's motorcycle or the cover with the rental unit door, however, he disputes the amount of damage done. He further testified that the fender of the motorcycle was too close to the rental unit door and should not have been there. I also note that the Landlord did not deny any of the other disturbing allegations of the Tenant.

The Landlord testified he has filed his own claim against the Tenant for unpaid rent for January 2011.

The Landlord further testified he had not watched the video provided in evidence by the Tenant, although both parties agree this evidence was served on the Landlord prior to the hearing, in accordance with the rules of procedure.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find that the Landlord has breached section 28 of the Act, by infringing upon the privacy of the Tenant, by unreasonably disturbing the Tenant and by significantly interfering with the Tenant's quiet enjoyment of the rental unit.

I find that the Landlord lacked credibility in his testimony as he had insufficient evidence to prove there was a burst pipe, or any other emergency, which would have motivated the Landlord to break down the door of the rental unit while the Tenant was in occupation. I note that during the entire video, which recorded the conversations before

and after the Landlord broke down the door to the rental unit, there is no mention of a burst water pipe or any other emergency requiring his entrance to the rental unit.

I also note that, while the Landlord may own the building in which the rental unit is situated, once he rented the unit to the Tenant, the Tenant acquired rights under the Act to the rental unit which have been breached by the Landlord in a significant manner.

For loss of quiet enjoyment of the rental unit, I find that the Tenant is entitled to a reduction in rent equivalent to one month of rent, and order that the Tenant is not required to pay the Landlord any rent for January of 2011.

I note that in his Application the Tenant indicated that he was seeking \$300.00, which is the amount of his security deposit which he requests be returned. However, it is clear from his Application, evidence and submissions that the Tenant was also requesting monetary orders for compensation for damage to his personal property and for a reduction in rent. Therefore, as the Landlord was fully aware of the claims against him, I allow the Tenant to amend his Application to include the monetary claims he made in his Application and written submissions.

I also find that the Landlord damaged the Tenant's personal property and I order, under section 67 of the Act, the Landlord to pay the Tenant the sum of \$889.11 in compensation. For reference, section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Lastly, as the tenancy has ended and the Landlord did not perform any incoming or outgoing condition inspection reports, I allow the Tenant's application for return of the security deposit and interest, and I order the Landlord to return the security deposit and interest of \$309.71 to the Tenant.

Therefore, I find that the Tenant has established a total monetary claim of **\$1,248.82**, comprised of \$889.11 for damages to personal property, \$309.71 for the return of the deposit and interest, and \$50.00 for the fee paid by the Tenant for this application.

I grant the Tenant an order under section 67 for the balance due of **\$1,248.82**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order 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*.

Dated: January 20, 2011.

Residential Tenancy Branch