



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC

Introduction

The tenant seeks a monetary order for compensation for damage or loss in the sum of \$18,580.00.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss?

Preliminary Issues – Is this Application filed within the Proper Time Limits?

The evidence is that this tenancy pursuant to an Order of Possession issued November 4, 2008. In that Order the tenant was commanded to deliver full vacant possession to the landlord not later than 2 days after service.

The landlord argues that the tenant actually moved out in September 2008 and that having filed this application on November 3, 2010, he is over the 2 year time limit to make a claim.

The tenant argued that he paid rent for October 2008 and therefore maintained possession of the rental unit for that month.

I will rely on the Order of Possession supplied in evidence to determine the end date of this tenancy. As the Order of Possession was issued November 4, 2008 I find that the earliest possible moment this tenancy could have ended was November 6, 2008, that being 2 days after service. I therefore find that the tenant had until at least November 6, 2010 to make his claim. His claim is filed on November 3, 2010 and I find that his claim was filed within the proper time limits.

Background and Evidence

The tenant says the landlord undertook renovations to the property and the tenants were forced to live outdoors from approximately April to November 2009. The tenant is claiming \$9,950.00 in lieu of rent for having to live out of doors.

In his submissions the tenant says the rental unit was infested with "6,000" bats. In his written submissions the tenant says he is claiming \$6,930.00 because:

The landlord assessed the costs of cleanup of hundreds of migrating bats that came to reside in the rental premise on the tenant in contravention of Section 32 of the Act. The tenant claims \$6,930.00 in respect of the costs that were improperly invoiced to the tenant and the tenant claims that the landlord contravened the Act by allowing the premises to become hazardous to human health. The landlord was well aware of the migrating bats and had built a bat house and had previously sold the guano as fertilizer.

(reproduced as written)

Further the tenant is claiming the costs of \$500.00 from the landlord because:

The landlord assessed the costs of cleanup of a significant amount of garbage and in contravention of section 32 of the Act. The tenant claims \$500.00 in respect of the costs that were improperly charged to the tenant and the tenant claims that thy landlord contravened the Act by allowing the premises to become unsuitable for occupation by the tenant.

(reproduced as written)

With respect to this \$500.00 claim at the hearing of this matter the tenant testified that this was the security deposit he paid for the rental unit which the landlord used to pay for removal of garbage left behind by previous tenants.

The tenant also claims \$1,200.00 stating in his written submissions that:

As a result of the contamination of the premises by either mold or bat guana or a combination thereof, the tenant stared to and continues to suffer from a number of health issues and all of which resulted from the landlord's failure to property comply with health, safety and housing standards as alleged herein. As the

result of said health issues, the tenant claims \$1,200.00 in respect of his out of pocket medical expense related to asthma or some form of respiratory issue.

(reproduced as written)

The sums set out above total \$18,580.00 which is the sum the tenant claims from the landlord as a result of the landlord's breaches of the Act in that he:

- a) Failed to comply with the health, safety and housing standards required by law,
- b) Having regard to the age, character and location of the rental property failed to be suitable for occupation by the tenant;
- c) the landlord cannot rely on the provisions of a tenancy agreement in regards to the landlord's obligations under the Act with respect to the condition of the rental premises and
- d) the tenant's awareness of such disrepairs at the times he entered into or renewed the tenancy agreement is not relevant to the landlord's obligations to maintain and repair the rental premises pursuant to s. 32(5) of the Act.

(reproduced as written)

In response to the tenants claim for \$9,950.00 in return of rent for the period he says he was forced to live outside (April to November 2009) is impossible. The landlord says this is impossible because the tenant was evicted by way of an Order of Possession issued November 4, 2008 in which the tenant was ordered to deliver full and peaceable vacant possession of the property 2 days after service. Further, the landlord submits that during times when renovations were undertaken in the rental unit the tenant resided in another 2 bedroom home on the property. While those renovations were undertaken the tenant was also given a rental reduced of \$500.00 per month while the renovations were being performed.

With respect to the tenant's claim for \$6,950.00 the landlord says the property on which the rental building sits, has other buildings on the property one of which housed migratory bats. The landlord says that the tenant did not live in to what was referred to as "the Bat House". The landlord says the bat society worked closely with the landlord to build an alternate structure for the bats and move them to that structure. The landlord says the tenant was never assessed or invoiced for any sum with respect to dealing with the bats.

With respect to the tenant's claim for recover of a \$500.00 security deposit he says the landlord withheld the landlord says that by way of a previous Decision rendered

November 4, 2008 it was found the tenant never paid a deposit which is one of the reasons he was evicted for breach of the tenancy agreement.

With respect to the condition of the rental unit the landlord says that during the course of this tenancy the tenant did not complain of any issues with the property verbally or in writing except for a leaky toilet and faulty stove which were repaired by the landlord's maintenance person.

With respect to the tenant's claim for \$1,200.00 for "health issues" the landlord submits that the tenant is a "...heavy smoker of all kinds". And this is more likely the cause of any respiratory illness he may suffer from.

The landlord says the tenant's claim is "...frivolous, unfounded...and suspiciously filed..." as it was made shortly after being summoned to appear before the Small Claims Division of the Provincial Court on October 7, 2010 to make payment arrangements with respect to the previously granted Residential Tenancy Branch monetary orders in the sum of \$3,014.00.

Analysis

The tenant bears the burden of this claim and I find he has failed to do so.

Specifically, with respect to the tenants claim for recovery of rent for the period April to November 2009 I find the landlord's evidence to be correct, that is based on an Order of Possession issued in 2008, the tenant did not have possession of the property from April to November 2009. The tenant's claim for rental recovery of \$9,950.00 is therefore dismissed.

With respect to the tenant's claim for recovery of \$6,930.00 the tenant says he was assessed by the landlord for cleanup with respect to the bats. The landlord says no such sum was ever assessed or invoiced to the tenant and I find that the tenant has failed to show otherwise or prove that he paid this sum to the landlord. This portion of the claim is therefore dismissed.

With respect to the tenant's claim for recovery of a \$500.00 security deposit, once again, I find the landlord to be correct. Based on a previous finding of the Residential Tenancy Branch in a decision rendered November 4, 2008, the tenant was evicted, in part, for breach of his duty to provide a security or pet deposit was never paid. This claim is also therefore dismissed.

With respect to the tenant's claim for \$1,200.00 in medical costs or losses I find that the tenant has failed to bring sufficient evidence to prove this claim.

Conclusion

All of the tenant's claims are dismissed.

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*.
