



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, ERP, RP

Introduction

This hearing was convened in response to an application filed by the tenant seeking:

1. A monetary order for compensation for damage or loss in the amount of \$20,000.00;
2. An Order that the landlord return the tenant's security deposit;
3. An Order that the landlord comply with the Act;
4. An Order that the landlord make emergency repairs for health or safety reasons; and
5. An Order that the landlord make repairs.

This hearing was originally scheduled for August 25, 2011. The landlord attended the hearing to request an adjournment. The landlord testified that he had not had time to review the evidence in this matter or to seek legal advice and this was particularly necessary due to the sum being sought.

The landlord's request for an adjournment was granted and the hearing was rescheduled for September 27, 2011.

Both parties attended and gave evidence under oath or affirmation.

Issue(s) to be Decided

Is the tenant entitled to any of the Orders sought?

Background and Evidence

The tenant testified that he paid a security deposit at the start of this tenancy in January 2011. The tenant says he was illegally evicted on June 28, 2011 and to date his security deposit has not been returned. The tenant says he has not provided his forwarding address to the landlord.

In his written submissions the tenant says the rental unit was a single room infested with mice, cockroaches and bedbugs. The tenant says he could not eat properly because of the cockroach infestation which does not allow him to keep food in his room. The tenant says rats come from under the sink and cause him anxiety and sleeping problems. The tenant says there is black mould on the ceiling in the unit and the toilet frequently did not work and in the winter the hot water did not work for days at a time up to a week.

The tenant says he complained to the landlord, GW, but he advised he would not fix the problem because the tenant was a "trouble tenant". The tenant explained that he has a methadone prescription and the landlord told him to get it filled at his clinic. The tenant refused to do so; the tenant says the landlord told him "People who aren't in our program, we don't want them under our roof."

On June 7th the tenant says someone slipped an eviction notice under his door. It was handwritten and had no specifics on it. He recalls it saying that he had to vacate the premises by the first of July due to inappropriate behaviour. The tenant says he did not understand why he was being evicted although he states that he was withholding his rent at the time because the conditions were so bad, however round June 15, 2011 "they took the rent cheque and cashed it."

The tenant says that on June 28 at approximately 2 a.m. he tried to come home and was refused entry by the desk clerk who told him "You're barred. I don't have confirmation that you're allowed on the property". The tenant says he snuck into the building and went to sleep. The tenant says that the police showed up at his door the next morning to advise the tenant that "The landlord doesn't want you here. You have to pack up and leave". The tenant advised the police his rent was paid and it was his room. The landlord says the police left saying that GW would have to go through other routes. The tenant says he left for the day and then saw some of his belongings in the alley behind the building. The tenant says he returned to the building at 4:30 with an advocate named Ivan but they were denied entry and told "You're not welcome here".

The tenant says that "Brian" called the police and said that they tenant had assaulted someone but Ivan called the police as well to correct Brian's version of events. The tenant says he and Ivan waited on the sidewalk and when the police arrived they escorted him to his room and the tenant removed his TV and mattress and left it with a friend in the building. That night the tenant stayed in a shelter. The tenant says he was homeless.

At the hearing of this matter the tenant says he lost personal property and quiet enjoyment during his tenancy. The tenant says he was never supplied with a key to his room and guests were not allowed in. The tenant says the landlord would not allow his pharmacist in to provide him with his medication as a result of which he began to suffer from delirium tremens and was taken to hospital emergency. The tenant says that this was all documented although he did not provide documentation at the hearing. The tenant says the police never escorted him out. It was the medical authorities who took him to the hospital. The tenant says he lost \$3,955.00 worth of goods including a Jimi Hendrix print in a chrome frame numbered 146/125 which he says is valued at between \$500.00 to \$1,500.00.

The landlord testified that this tenant was a problem tenant who was a danger to himself and to other tenants. The landlord says the tenant would climb up the fire escape and climb between the rooms in the courtyard. The landlord says the tenant was not evicted but he was escorted out by police and never returned. The landlord says that there was nothing of value left in the room. The landlord said the tenant was welcome to come back to the room but notes that the tenant did not pay his rent. The landlord says the room remains vacant.

The witness BK testified that he did tell the tenant he was evicted for fighting. BK testified that this was a quiet hotel and the tenant was creating a lot of trouble. BK says he gave the tenant a pre-printed paper which was a 1 month Notice to End Tenancy. BK also said it was an "immediate eviction" as the tenant had given them a lot of problems. Tenant's counsel asked BK who evicted the tenant BK responded "Everything goes through George I just do my job". Tenant's counsel also asked "Did you remember any of his belongings BK testified that he had nothing, he's a "stealer man" but he was there when the tenant moved his queen sized bed into another tenant's room.

The witness GH appeared on behalf of the landlord and was questioned by the tenant, the tenant asked GH if he recalled the tenant packing up his goods and moving them into GH's room goods such as his paperwork, photographs of his daughter and the queen sized bed. GH agreed he recalled seeing this and stated that he purchased the tenant's queen-sized bed.

Advocate for the tenant, DK testified that he accompanied the tenant along with a support worker, Ivan, to the rental unit along with the police to retrieve the tenant's belongings and that it was the case that the tenant had been illegally evicted.

Analysis

As the tenant has vacated the rental unit his claims for orders that the landlord comply with the Act and make repairs are dismissed as this tenancy no longer exists.

With respect to the security deposit, Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit if the landlord believes there is cause.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

The evidence of the tenant is that he has not provided the landlord with his forwarding address. The tenant's claim is therefore premature and it is therefore dismissed with leave to reapply.

With respect to the tenant's claim for loss of his goods valued at \$3,955.00, I find his testimony with respect to these goods to be conflicting. The tenant submits that he landlord took his goods but at the hearing of this matter the tenant stated that he retrieved his goods with police escort and/or moved some of them into another tenant's room and/or sold them to someone else in the building. I am therefore not satisfied that the landlord is responsible for the loss of the tenant's goods and I make no award in this regard.

With respect to the rest of the tenant's claim for compensation for loss of quiet enjoyment in the sum of \$16,005.00, the testimony of the tenant and the landlord are conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find this to be the case here. The evidence shows that the tenant left the premises either by way of going to the hospital, police escort or on his own accord. A Notice to End Tenancy has not been provided in evidence and the tenant's own evidence and that of the landlord's witness is that the tenant moved his goods into another room for safekeeping. I find

that the tenant has failed to bring sufficient evidence to demonstrate to me that he was forced to leave.

Further, with respect to the living conditions in the rental unit over the course of his six month tenancy I find that the tenant has failed to bring sufficient evidence to show that there were problems or that he reported the problems to the landlord and the landlord refused to correct the problems.

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*.

Residential Tenancy Branch