



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MND, MNR, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order and an order compelling the landlord to return the security deposit and a cross-application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issues to be Decided

Are the tenants entitled to a monetary order as claimed?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The tenancy began on November 18, 2009 at which time the tenants paid a \$600.00 security deposit. The tenants were obligated to pay \$1,200.00 per month in rent.

The parties agreed that at the request of the tenants, the City undertook a number of inspections in late March and early April 2001 and advised the landlord that repairs were required to remediate a mould problem and correct significant electrical deficiencies. On or about April 7, the City posted a notice advising that the residence was unsafe to occupy.

The tenants testified that when the City's notice was posted, they moved substantially all of their belongings into the garage and stopped residing in the unit. The landlord testified that when he learned that the residence was unsafe for habitation, he drove his motor home to the unit and parked in the driveway, intending to stay there to ensure that the residence was secured. The parties agreed that the tenants summoned the police who told the landlord that the tenants had the right to continue to reside in the unit until such time as their tenancy had ended pursuant to the *Residential Tenancy Act* and asked him to leave the property. The landlord made an application with the Residential Tenancy Branch for an order ending the tenancy early. The landlord was unsuccessful in his application and on May 6 he served the tenants with a 10 day month notice to end tenancy for unpaid rent. The tenants did not dispute the notice and in a hearing held on June 8, 2011, the landlord was granted an order of possession.

The parties agreed that the tenants vacated most of their belongings shortly after the June 8 hearing. The landlord testified that he checked the property shortly after the hearing and found that it looked intact. The landlord further testified that approximately one hour after having checked the property, he returned and saw the tenants inside vehicles which sped away from the property. The landlord entered the rental unit to discover significant damage. He testified that all of the windows had been broken, appliances and kitchen cabinets severely damaged, pipes cut, roof tiles and garage doors damaged and an extensive amount of garbage throughout the unit. The landlord alleged that the tenants caused the damage while the tenants denied having done so.

The parties agreed that between the time when the landlord was forced by the police to remove his motor home from the unit and the June 8 hearing, the rental unit had been vandalized several times.

The tenants seek to recover several months' rent, their security deposit, moving and storage costs and recovery of their costs for gas, food, liquor and cigarettes. The tenants claim that they were unable to occupy the unit as a result of the order posted by the City on April 7 and that they were forced to find other accommodation as a result. The tenants argued that the landlord should pay for cigarettes and liquor because they were forced to turn to alcohol and tobacco in order to relieve the stress associated with the events associated with their tenancy and that they had never drank or smoked prior to these events.

The landlord seeks to recover \$185.10 in unpaid utility bills, \$864.00 as the cost of cleaning garbage out of the rental unit, \$1075.06 as the cost of removing garbage from the residential property and \$20,275.00 as the cost of repairing the damage done by the tenants. The landlord presented evidence showing that the actual cost to repair the rental unit was estimated at more than \$86,000.00, but testified that he reduced his claim to bring it within the jurisdiction of this tribunal.

The landlord also seeks to recover \$200.00 from the tenants as he claimed that the tenants paid rent in the month of March in cash and that 2 of the \$100 bills were counterfeit. He further seeks to recover \$1,200.00 in rent for each of the months of May and June as well as recovery of the filing fee paid to bring his application.

The tenants denied having used counterfeit bills to pay their rent in March and argued that the landlord could have substituted counterfeit bills for the genuine bills they gave.

Analysis

First addressing the tenants' claim, I accept that the tenants move a substantial portion of their belongings into the garage and did not reside in the rental unit after the city advised that the rental unit was unsafe to occupy. However, the tenants did not surrender possession of

the rental unit, but rather fought to retain possession by advising police that they had possessory rights and not moving their belongings from the garage. I find that as long as the tenants maintained possession of the unit and kept their belongings in the garage, they were occupying the unit, regardless of whether they were sleeping there.

When they learned that the unit was unsafe to occupy, the tenants had an obligation to minimize their losses by securing other accommodation as soon as possible and moving their belongings to that new location. I am not satisfied that the tenants made any efforts whatsoever to move their belongings. Rather, they appear to have determined to enjoy the rental unit as free storage and assumed that the landlords would be compelled to pay for their living expenses for an indefinite period of time. Had the tenants surrendered possession of the rental unit, they may have been entitled to recover expenses associated with their inability to continue to reside in the unit. But I find that as they retained possession for a further 2 months and have shown insufficient evidence to prove that they attempted to mitigate their losses, they no longer have any entitlement to compensation. I dismiss the tenants' claim in its entirety.

Turning to the landlord's claim, I find that the tenants were obligated under the tenancy agreement to pay utilities and that they failed to do so. I award the landlord \$185.10.

I find that the tenants left an excessive amount of garbage and belongings behind at the rental unit when they vacated. Although the tenants argued that the items outside the unit were there when they moved into the unit, I find it unlikely that they would not have raised the issue with the landlord earlier as this much debris would have surely interfered with their use of the rental property. If some of the debris came from vandals, I find that the tenants must bear the responsibility for that debris as they failed to secure the rental unit. I find that the landlord attempted to secure the unit but was prevented from doing so by the tenants who claimed exclusive possession of the residential property. I find that the tenants should be held responsible for both the \$864.00 labour fee and \$1,075.06 fee to haul the garbage away. I award the landlord \$1,939.06.

Although the tenants claimed that they were not the parties who gave the landlord the counterfeit bills in the month of March, I find it more likely than not that they did. The landlord deposited exactly the amount of the rent on the same day the tenants paid it in cash and he made a notation on the deposit slip that this was the tenants' rent. If the landlord had had counterfeit bills in his possession, I find it unlikely that he would have substituted those bills for the tenants' genuine bills and attempted to deposit those into his bank account as he likely would have known that the bank would identify the bills as counterfeit. I find that the tenants owe the landlord \$200.00 in rent and I award the landlord that sum.

Although the tenants remained in possession of the rental unit for the month of May and part of June, I find that the landlord would have been unable to re-rent the unit without having performed the remediation required to make the unit habitable again and I find that the landlord should not be able to recover rent for a period in which the unit was uninhabitable. I dismiss the claim for rent.

As for the landlord's claim for the cost of repairing damage to the rental unit, I find it more likely than not that the tenants caused the damage in question. I accept that the landlord saw them speeding away from the rental unit shortly after they were informed at the June 8 hearing that they had to surrender possession of the rental unit and I find it likely that they caused the damage in question in a fit of spite. Although the estimate for repairs includes issues such as asbestos removal for which the tenants should not be held responsible, I find that they are liable for a substantial portion of the bill which far exceeds the landlord's \$20,275.00 claim. I find that the landlord is entitled to the \$20,275.00 claimed and I award him that sum.

As the landlord has been substantially successful, I find that he should recover the filing fee paid to bring this application and I award him \$50.00.

Conclusion

The tenants' claim is dismissed. The landlord has been awarded \$22,649.16. I order the landlord to retain the \$600.00 security deposit in partial satisfaction of the award and I grant the landlord a monetary order under section 67 for the balance of \$22,049.16. This order may be filed in the Small Claims Division of the Provincial Court 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: September 13, 2011

Residential Tenancy Branch