Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, RPP, FF

Introduction

This hearing was scheduled for February 7, 2012 to deal with cross applications. The landlord had applied for a Monetary Order for unpaid rent; damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authority to retain the security deposit or pet deposit. The tenant applied for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; return of her security deposit or pet deposit; and, an Order that the landlord return her personal property.

Both parties appeared at the originally scheduled hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party. However, the time allotted to hear the disputes was not sufficient and I ordered the hearing adjourned.

The hearing was reconvened March 1, 2012 and both parties appeared at the reconvened hearing.

Issue(s) to be Decided

1. Is the landlord entitled to unpaid rent for November 2011?
2. Is the landlord entitled to compensation for damage to the carpeting, cleaning, locksmith costs and a new key for the mailbox?
3. Is it necessary to issue orders for the return of the tenant's property?
4. Is the tenant entitled to compensation for personal property not returned to her?
5. Has the tenant established an entitlement to compensation for loss of quiet enjoyment?
6. Should the security deposit be retained by the landlord or refunded to the tenant?

Background and Evidence

I was provided with the following undisputed evidence: The tenancy commenced mid-January 2011 and the tenant paid a $475.00 security deposit. No pet deposit was paid although the tenant did have a cat in the unit. The tenant was required to pay rent of

$950.00 on the 1st day of every month a month-to-month basis. The tenancy relationship started to deteriorate in September 2011 and the landlord issued two warning letters to the tenant with respect to noise and parking with the last one being dated October 4, 2011. Shortly after the second warning letter the tenant approached the landlord and the tenant verbally requested the tenancy end mid-November 2011 and that the security deposit be applied to rent payable for November 1 – 14, 2011.

Landlord's application

Unpaid Rent

The landlord is seeking to recover unpaid rent for the month of November 2011 from the tenant. It is undisputed that the tenant did not pay rent for November 2011.

The dispute revolved around the landlord's verbal response to the tenant's request to end the tenancy effective November 14, 2011. The tenant submitted that she and the landlord mutually agreed by way of their verbal discussion that the tenancy would on November 14, 2011 and the tenant could use her security deposit to pay rent for November 1 - 14, 2011. The landlord submitted that he had verbally told the tenant that ending the tenancy in mid-November "shouldn't be a problem" if he was able to find replacement tenants for the remainder of November 2011.

It was undisputed that the day after the verbal discussion the landlord requested the tenant put her notice in writing. On October 8, 2011 the tenant put her notice in writing with a stated effective date of November 14, 2011. On October 11, 2011 the landlord wrote to the tenant and advised her that she was responsible for giving proper notice, that she was responsible for paying the full month's rent for November and that he was mistaken for saying he would accept the security deposit in lieu of two weeks rent. On October 11, 2011 the tenant entered into a new tenancy agreement.

The landlord submitted that on October 31, 2011 he received a message from his neighbour that the tenant was moving out her possessions. The landlord posted a 10 Day Notice to end Tenancy for Unpaid Rent on November 2, 2011 and observed through the window that the unit appeared to be vacated. The landlord entered the rental unit and started cleaning. On November 3, 2011 the landlord's spouse called the tenant's employer to ask that she return the keys to the unit. The landlord was of the position the tenant had abandoned the rental unit and he started cleaning the unit. The landlord re-rented the unit in mid-January 2012.

The tenant submitted that she did not bolt from the property on October 31 as alleged by the landlord. The tenant submitted that she moved the majority of her possessions

out of the property on November 1, 2011. She intended to return to the property to clean on her days off between November 4 – 7, 2011; however, the landlord was abusive towards her and told her not to return the property on November 4, 2011 so she did not. She claimed that she put the keys in the community mailbox November 8, 2011.

Damage and cleaning

It was undisputed that the landlord did not complete a move-in inspection report. Below I have summarized the landlord's claims for damage and cleaning and the tenant's responses.

Carpeting – $600.00

The landlord submitted that the tenant's cats urinated on the carpet leaving a strong urine odour. The tenant's cats also clawed at and ripped up the carpet. The landlord observed bleach stains on the carpeting as well. The landlord has received an estimate of $600.00 to replace the carpeting. The landlord has not replaced the carpeting as the new tenants have dogs and were not very concerned about the condition of the carpeting. The landlord stated the carpeting is approximately 8 years old but the space was used as a suite for only 3.5 years. The landlord submitted an estimate from a contractor quoting $600.00 for the cost of replacing the carpet.

The tenant submitted the carpeting was filthy when she moved in and she steam cleaned it twice. The tenant's cats did not tear up the carpet because she had a scratching post for them. Rather, the edges were ripped up when tenant pulled up the cable. The tenant did not notice a urine odour. The tenant was of the opinion the carpets looks to be more than 4 years old. The tenant submitted the contractor who provided a quote for the landlord is the landlords' friend.

Cleaning – $300.00

The landlord cleaned the unit himself. He estimated that he spent approximately 8 hours cleaning and used his own supplies.

The tenant acknowledged that cleaning still needed to be done but that it was her intention to return to the property and clean it on her days off work: November 4 – 7, 2011. However, due to the landlord's abusive behaviour and instructions that she not return to the property she did not feel comfortable returning to the property. When she tried using the mailbox on November 8, 2011 she discovered the lock had been changed so she put the keys in her possession in the community mailbox.

Canada Post key -- $25.00

The landlord changed the key to the mailbox as the landlord did not feel comfortable knowing the tenant had access to the mailbox. The landlord paid Canada Post for new keys.

The tenant did not agree that she is responsible for this cost as the landlord changed the lock before her tenancy was over.

The landlord withdrew his claim for locksmith charges.

In addition to the above claims, the landlord had initially added the security deposit to his claim but amended the claim during the hearing to request retention of the security deposit in partial satisfaction of the amounts claimed by the landlord.

Tenant's application

The tenant is seeking return of her security deposit and compensation for the following claims against the landlord:

Return of Possessions and compensation of $350.00

The tenant is seeking return of personal possessions left at the residential property. The tenant described the possessions as her vacuum; garbage can; microwave; towel; tablecloths; calculator and other Partylite business supplies such as invitations, order forms and brochures. As an alternative, the tenant is seeking compensation of $350.00, the estimated re-sale value, if the possessions are not returned to her.

The tenant submitted that she had intended to return to the property on November 4, 2011 to pick up the remainder of her possessions and to clean the unit but that due to the landlord's abusive behaviour towards her she did not feel comfortable returning the property.

The landlord submitted that her vacuum and garbage can are still at the property and the tenant can pick those up. The landlord submitted that there was no microwave left at the property except for the microwave supplied with the rental unit. The remainder of the tenant's possessions appeared to be garbage or abandoned property and the landlord has thrown those items away. The landlord described how most of the possessions were in garbage bags with what appeared to be kitty litter on top. The landlord claimed that he is aware of his obligations as a landlord with respect to storing items of value but the landlord submitted there were none.

The tenant was prepared to call her mother to testify as to the existence of her microwave. The tenant submitted that her mother would testify that the tenant's microwave was a gift from her and that she saw the microwave was in the rental unit on September 24, 2011. I did not find it necessary to call the tenant's mother as a witness as the mother would not be able to confirm whether the microwave was still in the unit as of November 1, 2011 after the tenant removed the majority of her possessions out.

Loss of quiet enjoyment $1,200.00

The tenant submitted two parts to this claim but I have recorded the submissions under this one heading.

The tenant is seeking compensation for the following items:

1. The landlord or his spouse began to flush their toilet excessively (approximately 5 times) in October 2011 between 8:00 – 8:45 a.m. knowing the sound was loud in the rental unit.
2. The landlord entered the unit three times without consent or notice:
    a. 1st month of tenancy landlord entered to make repairs in unit;
    b. Another time landlord or contractor entered to access electrical panel
    c. The landlord entered the unit with his mother-in-law to show her the suite.
3. The landlord failed to give the tenant notice that the water was going to be unavailable one day due to construction on the street.
4. The landlord's cable provider had disconnected the tenant's phone, internet and cable service. It took 4 days to get her service restored.
5. On October 1, 2011 the tenant found that the landlord had left several messages for her on September 28 and 29, 2011 with respect to paying rent for October 2011 even though rent was not due yet.
6. The landlord began threatening the tenant with eviction on October 4, 2011 based on allegations the tenant had her music too loud.
7. The landlord phoned the tenant October 26, 2011 and began yelling and screaming at her, called her a rude name and hung up on her. This conversation initially pertained to the end of tenancy and whether there had been an agreement to end the tenancy mid-November 2011.
8. In late October 2011 the landlord sent repeated text messages to her phone and threatened to take issues to the tenant's employer. The tenant provided excerpts of text messages between the landlord and tenant.
9. The landlord or his spouse contacted the tenant's employer which the tenant submitted made her look bad at work. The tenant provided a statement from her employer.

The landlord responded to the tenant's submissions as follows:

1. The landlord and his spouse used the toilet as necessary and there was no ulterior motive in flushing the toilet.
2. The landlord acknowledged entering the tenant's unit the times the tenant described but the landlord claimed he had the tenant's verbal consent to enter for repairs at the beginning of the tenancy and to show the unit to his mother in law. The landlord stated that the unit needed to be entered in order to access the electrical panel as a circuit had blown.
3. The landlord was unaware that water was going to be shut off due to construction on the street.
4. The landlord had not instructed his cable provider to disconnect the tenant's services. As soon as he learned this had happened he called his cable provider immediately and on a number of occasions to have them come back to restore her services.
5. No response was given or requested with respect to the tenant's allegation several messages were left for her in late September regarding October's rent.
6. In September/October 2011 the landlord started noticing change in the tenant's behaviour. The landlord needed to bring his displeasure with loud music and parking issues to the tenant's attention in order to resolve these issues.
7. The landlord acknowledged there was a phone conversation on October 26, 2011 but the landlord recalls that the tenant stopped talking. The landlord was of the position the tenant was being difficult by way of her silence and not willing to find a way to resolve their dispute.
8. The landlord denied sending repeated texts to the tenant. Rather, the landlord was of the position the messages may have been received several times due to problems with the transmission of the cell phone signal.
9. The landlord did not approach the tenant's employer for rent as he indicated he would in text messages; however, the landlord's spouse did contact the tenant's employer, on his behalf, in an effort to retrieve keys for the unit.

Evidence provided to me included: photographs of the rental unit; various written communications between the parties including text messages and the tenant's notice to end tenancy dated October 8, 2011; the last page of the tenant's new tenancy agreement signed October 11, 2011; a 10 Day Notice to End Tenancy issued November 2, 2011; a list of the tenant's possessions left at the property including estimated re-sale value; a statement from the tenant's employer; a statement from the landlord's contractor; evidence the landlord refunded the previous tenant for his security deposit.

Both parties provided written submissions with their applications which I have read and considered.

Analysis

Upon consideration of all of the submissions and evidence presented to me, I provide the following findings and reasons with respect to each of the application before me.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In providing verification of the value of the loss, it is reasonable to expect the party who bears the burden to show the value of the item claimed by providing written estimates, receipts or invoices unless such documents are not obtainable, in which case another reasonable basis will be considered.

Landlord's claim for unpaid rent

The Act also requires that a mutual agreement to end tenancy be made in writing. The parties did not sign a mutual agreement to end tenancy as required by the Act. The Act requires a tenant to give one full month of written notice to end a month-to-month tenancy. I have considered whether the landlord waived his right to receive written notice to end tenancy from the tenant.

I was provided disputed evidence as to what was said during a verbal conversation between the parties in October 2011. Although the tenant submitted that a verbal agreement is still a binding contract, the Act provides in section 5 that parties cannot avoid or contract out of the Act. Reducing disputes between landlords and tenants that

arise out of verbal agreements is conceivably one of the main reasons why the Act requires any notice to end tenancy to be in writing since it is nearly impossible for a third party to determine what was said, in some instances, several months prior to a hearing.

The tenant has the burden to establish the landlord waived his right to receive written notice to end tenancy. Yet, it is undisputed the landlord did request written notice from the tenant and this request was made before the tenant signed her new tenancy agreement. Therefore, I find I am not satisfied the landlord waived his entitlement to receive written notice to end tenancy from the tenant.

Since it was the tenant's obligation to give written notice to end the tenancy I find that in giving the landlord notice on October 8, 2011 the effective date of the notice automatically changed to read November 30, 2011 under section 53 of the Act. Therefore, I find the landlord had an entitlement to receive rent from the tenant for the month of November 2011.

Although the landlord had the right to receive rent from the tenant on November 1, 2011 I do not award the landlord the full month's rent due to the events that occurred subsequently and as explained below.

I accept the tenant's submission that she intended to return to the property to clean between November 4 - 7, 2011 as this is supported by her text message she sent to the landlord on November 4, 2011 where she states "I will be back to clean" at 3:40 p.m. After several other text messages the landlord responds with a text to the tenant: "I am telling you that you are not to step on my property again unless you have my permission".

The landlord had submitted that he was of the position the tenant had abandoned the rental unit after removing the majority of her possessions. However, on November 4, 2011 the tenant indicated to the landlord she would be returning to clean. I find that at that point the tenant indicated to the landlord she had not abandoned the rental unit. Thus, the tenant still had the legal right to access the rental unit until such time the tenancy legally ended.

Although the tenant breached her obligation to give proper notice and pay rent those actions alone did not end the tenancy. Rather, the tenancy would have ended on the effective date of the 10 Day Notice posted by the landlord. Thus, I find the landlord significantly interfered with the tenant's right to access the property starting November 4, 2011 when he instructed her not to return to the property.

In light of the above, I limit the landlord's claim for unpaid rent to the days up to and including November 4, 2011 or $126.66 [$950.00 * 4/30 days].

Landlord's claim for damage and cleaning

Carpets – Upon review of the landlord's photographs and the tenant's testimony, I find the tenant did damage the carpet insofar as pulling up the edges when she removed the cable. However, in the absence of a move-in inspection report and faced with disputed evidence from the parties, I find I am unable to determine the condition of the carpeting at the beginning of the tenancy and I do not hold the tenant responsible for stains on the carpet.

The landlord obtained a $600.00 estimate for the cost of replacing all of the carpeting; however, the landlord is not entitled to recover that amount from the tenant. Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. The average useful life of carpeting is 10 years in accordance with Residential Tenancy Policy Guidelines and in this case the carpeting was already 8 years old.

Considering the carpeting is approximately 80% through its economic life, the landlord did not establish the tenant was responsible for all of the stains in the carpet, and the carpets are being used by the current tenants, I have estimated that a reasonable award to the landlord for the damage to the carpet for which the tenant is responsible for is $50.00.

Cleaning – A tenant is required to leave a rental unit reasonably clean at the end of the tenancy. That being said, a tenant must be permitted the opportunity to access the unit to do so up until the time the tenancy has legally ended. As stated earlier, the tenancy would have ended on the effective date of the 10 Day Notice. Thus, I find that in restricting the tenant's ability to return to the property as of November 4, 2011 the landlord interfered with the tenant's ability to return to the property to clean the unit. Accordingly, I find the landlord's actions have now precluded the landlord from claiming for compensation against the tenant for cleaning.

Mailbox key – I was not provided evidence to verify this claim and it is denied.

Return of Tenant's Possessions

The landlord acknowledged the tenant's vacuum and garbage can are still at the property. I ORDER the tenant to advise the landlord when she will attend the property

to pick up these items with a reasonable amount of notice. I ORDER the landlord to make these items available to the tenant at the date/time specified by the tenant.

With respect to the microwave, I find insufficient evidence the tenant left a microwave at the property when she moved the vast majority of her possessions out of the unit on November 1, 2011. Nor did the tenant provide sufficient evidence as to the make/model or value of the microwave. Therefore, I find the tenant has not established that the landlord has the microwave or an entitlement to compensation for it.

With respect to the remainder of the tenant's possessions, I find I am unsatisfied that these are possessions of any value. Other than the microwave the tenant did not mention any of her possessions to the landlord during their numerous text exchanges in early November 2011. Rather, the tenant indicates she intended to return to the property to clean which suggests to me these items left behind were either trash or no longer wanted, as put forth by the landlord. Therefore, I make no award for compensation to the tenant for these items.

Tenant's Right to Quiet Enjoyment

In order to establish an entitlement to compensation for loss of quiet enjoyment the tenant has the burden to show that the landlord's actions were significantly disturbing and more than a temporary inconvenience. Significant interference or disturbance may be established where it is shown the landlord is responsible for:

- frequent entering of the unit or without notice or permission;
- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;

It is apparent to me that the tenancy relationship was reasonably successful until it started to degrade in September 2011 and then became toxic in October 2011. I find the tenant's requests for compensation for events that took place earlier in the tenancy to be more retaliatory than an indication she was significantly disturbed earlier in the tenancy taking into account the following considerations.

Had the tenant suffered a significant loss of quiet enjoyment with respect to the landlord's entry in the unit I find it reasonable to expect she would have communicated her dissatisfaction at the time. Flushing a toilet five times in a morning is nearly impossible to prove was a deliberate act to disturb the tenant. The landlord was not responsible for the water being shut off on the street and there is insufficient evidence

the landlord knew the water was going to be shut off. Nor has it been shown that the landlord is responsible for the cable provider inadvertently cutting off the tenant's services and the landlord took action to have it restored. Therefore, I find the above actions are either temporary inconveniences or not proven to be significant disturbances by the landlord.

With respect to the October 26, 2011 phone call, based on the balance of probabilities, I accept the tenant's submissions that the landlord was yelling at her and called her a rude name. I make this determination based upon her text message to the landlord on October 27 where she asks that he not to speak to her personally in the future and requests communication to her be via text message. In her text message she refers to him raising his voice and calling her a rude name before hanging up on her.

Later on October 27, 2011 the landlord sends the same message to her several times: at 4:49, 4:57, 5:01, 6:02, 6:21, 6:32, and then at 6:35 he writes "let me know when u get the message. I can send it to ur boss if u aint getn it. No problem"

The message at 6:35 leads me to conclude that the repeated messages prior to 6:35 were not the result of a problem with the cell phone signal. Rather, I find it clear the repeated messages were deliberate and in retaliation for the tenant's request that the landlord only communicate with her via text.

I find the repeated texts and the threat to send the message to the tenant's boss is intended to be annoying and intimidating. At the very least it is highly inappropriate and unprofessional.

The tenant has shown, via the text message print-outs, that the landlord made other threats to contact the tenant's employer. Whether the landlord actually followed through on the threat is not the issue. Rather, the threat is obviously intended to intimidate the tenant. The tenant also provided a statement from her employer that shows the landlord, or his spouse, contacted the tenant's employer on two occasions.

I find it highly inappropriate for a landlord to contact a tenant's employer and bring personal disputes to the employer's attention. I find the threats to contact the tenant's employer also constitute intimidation tactics that have no place in a tenancy relationship.

While I understand the landlord was of the position the tenant was in breach of her tenancy agreement and the Act, the landlord had legal remedies available to him under the Act to deal with breaches by the tenant. The landlord's choice to conduct himself in

a way that is intimidating has put himself in a position where the tenant is entitled to certain remedies under the Act, including compensation.

I have found sufficient evidence that the tenant began to suffer significant interference or disturbance from the landlord starting October 26, 2011. I award the tenant 50% of the rent she paid or is payable by the tenant for the days of: October 26 through November 4, 2011. I calculate the tenant's award to be: $153.22 [($950 x 50%) * 10/31 days].

As I have denied the landlord compensation for rent after November 4, 2011 I have made no award for compensation to the tenant for the landlord's actions that may have taken place after November 4, 2011.

Security Deposit and Monetary Order

As the landlord is still in possession of the tenant's security deposit the amount of the security deposit has been credited to the tenant. Since the landlord failed to prepare a move-in inspection report the landlord extinguished the right at the beginning of the tenancy to make a claim against the deposit for damage. Thus, it was not necessary to consider whether the tenant extinguished her right seek return of the deposit.

I have made no award for recovery of the filing fee by either party as I have found the conduct of both parties contributed to these disputes.

As both parties were partially successful in their applications, I have offset their respective awards and provided the tenant with a Monetary Order in the net amount calculated as follows:

Award/Credit for tenant:	
Loss of quiet enjoyment	$ 153.22
Security deposit held by landlord	475.00
Less: awards to landlord	
Unpaid rent	(126.66)
Carpet damage	(50.00)
Monetary Order for tenant	$ 451.56

Provided with this decision for the tenant is a Monetary Order in the amount of $451.56 to serve upon the landlord. The Monetary Order may be enforced in Provincial Court (Small Claims) if necessary.

Conclusion

Both parties were partially successful in their applications. The awards granted to each party have been offset and the tenant has been provided a Monetary Order in the net amount of $451.56 to serve upon the landlord.

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: March 30, 2012.

Residential Tenancy Branch