



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened by way of conference call in repose to the tenant's application to recover double the security deposit and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant and his agent and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord did not join the conference call until thirty minutes past the start time. The Dispute Resolution Officer summarized the tenant's testimony that had been given up to that time. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover double his security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

This tenancy started on October 012, 2010 for a fixed term of 12 months. The tenant ended the tenancy on January 30, 2011. Rent for this unit was \$800.00 per month which was due on the first day of each month in advance. The tenant paid a security deposit of \$400.00 on or about December 01, 2010.

The tenant's agent testifies that the tenant had to give two weeks' notice to the landlord to end his tenancy on the advice of the RCMP due to the landlords threatening behaviour towards the tenant. The tenant's agent states the tenant gave the landlord his forwarding address in writing by letter on February 04, 2011 and used an address of an Independent Living Centre as the tenant did not have new accommodation at that time. This letter also contained a request for the landlord to return the security deposit to that address. The letter was sent to the landlord by registered mail and the tenant has provided a copy of the letter and the registered mail tracking information in evidence. The tenant testifies that he had an arrangement with this Independent Living Centre to hold his mail and notify him if any mail came for him. The tenant states no mail was received for him at this office.

The tenant's agent states the landlord did not return the tenants security deposit within 15 days of receiving that letter and has no knowledge that the landlord filed an application to keep the deposit within that time frame. Therefore, the tenant seeks to recover double the security deposit from the landlord to the sum of \$800.00 plus any applicable interest.

The tenant's agent testifies that the tenant suffered a loss of quite enjoyment of his rental unit due to the landlord's actions. The tenant's agent testifies that the landlord harassed and intimidated the tenant and entered the tenants unit without proper notice. The landlord also used intimidating tactics by switching off the tenants power.

The tenant's agent testifies that the tenant notified the landlord that he had not received an electricity bill and wanted to see the bill before he went away for Christmas in 2010. The landlord failed to provide a copy of the bill and kept contacting the tenant when the tenant was away asking when the tenant was going to pay the bill or the electricity would be cut off. The tenant testifies that when he returned to his unit before the New Year he again telephoned the landlord to ask for the bill but was told the landlord had already paid it. The tenant testifies that on January 04, 2011 the power went off for thirty minutes. The tenant testifies he called the landlord and was told the landlord had tripped the breaker to his heating and this was then reset and the power came back on. The next day it went off for just a second and after the tenant gave the landlord his notice to end his tenancy the power went off and on again around January 24, 2011. The tenant states he did contact the RCMP about this power loss. The tenant testifies that around the same time the landlord's truck parked outside the tenants unit would be 'revved' up with loud music playing.

The tenant testifies that on January 04, 2011 the landlord came to the tenants unit to supposedly inspect the bathroom for cigarette smoke because the landlord claims to have seen the tenants girlfriend (the tenants agent for this hearing) smoking in the bathroom. The tenant agrees he allowed the landlord entry to his unit but the landlord became threatening and then served the tenant with a breach letter concerning late payment of rent. The tenant testifies that the landlord was yelling at him and threatening to sue the tenant. The tenant felt there was a threat of physical violence towards him so the tenant told the landlord to do whatever he had to do.

The tenant's agent testifies that she was present at the time the landlord came to the tenants unit on January 04, 2011. The tenant's agent testifies that she was sitting in the living room while the tenant and landlord were in the kitchen while the tenant paid his rent to the landlord. The tenant's agent testifies the landlord wanted to come to the tenants unit because he said he and his friend had seen the tenant's agent smoking in the tenant's bathroom from the landlord's window. The tenant's agent states she does not smoke but the landlord wanted to inspect the bathroom ceiling. The tenant's agent

testifies that the landlord said he could smell smoke in the bathroom. At that point the landlord pulled out a breach letter and started to wave it in the tenants face. The landlord was yelling at the tenant threatening to sue the tenant. The tenant's agent testifies that she witnessed an escalation of threatening conduct and the landlord became out of control. The tenant then told the landlord to do what he had to do and they left for their prearranged evening out. Later the tenant and his agent reported this incident to the RCMP who advised the tenant to move from the rental unit.

The tenant's agent testifies that she also perceives the landlords and the landlord's friend's actions of looking into the tenant's bathroom window as an invasion of privacy as she was the women in the bathroom at that time. The tenants agent states the tenant seeks compensation from the landlord equivalent to Januarys rent of \$800.00 for this harassment, intimidation, invasion of privacy and loss of quiet enjoyment.

The tenant's agent states the tenant also seeks compensation equivalent to Februarys rent of \$800.00 as the tenant was forced to find another place to live and had to remove his belongs and all his paintings. The tenant is on disability and found this stressful and difficult.

The landlord testifies that he did file an application to keep the security deposit on February 11, 2011. The landlord states the tenant was not served the hearing documents as the address the tenant gave as his forwarding address was a false address. The landlord states a hearing was held on May 10, 2011 and the landlord was given a Substitute Order allowing the landlord to serve the tenant at another address which the landlord knows the tenant visited regularly. The landlord states he did serve the tenant at that address but the mail was returned. The landlord states he also served the tenant at the address the tenant had provided but that mail was also returned. The landlord has not provided documentary evidence of either of these registered mail postings. The landlord testifies he telephoned the office for Independent Living and was told they would not accept mail for the tenant. The landlord agrees he did not follow through with his application at that time. The landlord disputes the tenants claim for the

return of the tenant's security deposit as the tenant ended the tenancy before the end of the fixed term and the landlord would therefore be entitled to unpaid rent.

The landlord disputes the tenants claim that he has disturbed the tenants right to quiet enjoyment or that he has threatened the tenant. The landlord testifies that he was sitting in his office in his house with a friend; the office window is adjacent to the tenant's bathroom window, approximately eight feet away, when the landlord's friend glanced up and noticed the tenant's girlfriend smoking in the bathroom. The landlord testifies that he also looked over and saw the tenant's girlfriend smoking. The landlord testifies he did not threaten the tenant but simply reminded the tenant that this is a non smoking unit and he would be evicted if he or his guests were caught smoking again. The landlord testifies that the tenant lied to the landlord at the start of the tenancy when the tenant informed the landlord that he was a non smoker as the tenant had also been smoking at the rental property. The landlord testifies that he did go to the tenants unit and the tenant allowed the landlord to enter the unit to check for smoke damage. The landlord testifies that he did not threaten the tenant at any time but did serve the tenant with a breach letter concerning late rent payments as the landlord was entitled to do and this is not harassment or intimidation. The landlord has provided a witness statement from his friend who saw the tenant's girlfriend with a cigarette in her hand.

The landlord testifies that he has never had a visit from the RCMP concerning this alleged incident. The landlord testifies that the property regularly loses power in the winter months and he did not at any time switch the power off to the tenants unit. The landlord testifies that during the winter he often has problems with his truck not starting. On occasion the tenant has helped the landlord start his truck. The landlord states he would start his truck remotely and let it run to ensure the battery would charge. The landlord agrees his truck is noisy but states the tenant was always aware of this.

The landlord testifies that the tenant and landlord had enjoyed a good relationship until the tenant was caught smoking in the unit. After that the relationship went downhill until

the tenant ended the tenancy on January 30, 2011. The landlord disputes the tenant's claims to compensation of \$1,600.00.

The tenant testifies that he did not receive any registered mail at the address in Duncan and did not receive any registered mail at the address the tenant provided as his forwarding address.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim to recover double the security deposit; I refer the parties to Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on February 09, 2011 (as it is deemed served five days after it was posted). As a result, the landlord had until February 24, 2011 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit but did file an application for Dispute Resolution to keep the deposit On February 11, 2011. The Landlord agrees he did not serve the tenant to the address provided by the tenant as he had information that led the landlord to believe this was a false address. A hearing was held on May 10, 2011 in which the tenant did not appear (because the tenant had not been served) and the landlord was given a Substitute Service Order to serve the hearing documents to the tenant at a different address provided by the landlord. The landlord claims he served the tenant at that address but has not provided any evidence to prove that service to the

tenant took place. The landlord then failed to follow through with any further action against the tenant with regard to his application to keep the security deposit. As the landlord failed to serve the tenant to the forwarding address provided by the tenant and failed to follow through with his claim to keep the security deposit and failed to return the security deposit within 15 days of receiving a forwarding address for the tenant I find that the tenant has established a claim for the return of double the security deposit to the sum of \$800.00 pursuant to section 38(6)(b) of the *Act*. There was no interest accrued on the security deposit during this time frame. A Monetary Order has been issued to the tenant for the sum of **\$800.00**.

With regard to the tenants claim for compensation of \$800.00 I refer the parties to the Residential Tenancy Policy Guidelines # 6 which states, in part,

At common law, the covenant of quiet enjoyment "promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy.

The tenant claims the landlord has broken this covenant by invading the tenants privacy, by entering the tenants unit without written notice, by intimidating and threatening behavior towards the tenant, by making excessive noise outside the tenants unit with the landlord truck and with loud music and by turning the tenants power off.

In this matter the tenant has the burden of proof and must show how the landlord has seriously disturbed the tenant or seriously interfered in the tenant's life that would warrant an Order for compensation to be granted against the landlord.

The tenant and his agent have described events leading up to the tenant ending his tenancy which clearly show that the relationship between the tenant and landlord had broken down in the last month of the tenancy. In order to prove an action for a breach

of the covenant of quiet enjoyment, the tenant has to show that there had been a serious interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. Such interference might include serious examples of:

- Entering the rental premises frequently, or without notice or permission;
- Unreasonable and ongoing noise;
- Persecution and intimidation;
- Refusing the tenant access to parts of the rental premises;
- Preventing the tenant from having guests without cause;
- Intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- Forcing or coercing the tenant to sign an agreement which reduces the tenant's rights;
- Allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

Having considered the arguments from both parties I find the tenant has insufficient evidence to show that the landlord conducted repeated or persistent harassment or intimidation against the tenant and has failed to show that the landlord was responsible for the short periods of loss of power to the tenants unit. I find the tenant has not met the burden of proof that the landlord intentionally disturbed the tenant by starting his truck remotely or that the landlord 'revved' the truck up or played loud music in the truck to the extent that these actions rendered the rental unit unfit for occupation. In this instance it becomes the word of the tenant and his agent, who is closely involved with the tenant, against that of the landlord. When it is one persons word against that of the

other than that burden of proof is not met. Consequently, I find the tenants claim for compensation is dismissed without leave to reapply.

With regard to the tenants claim for \$800.00 for having nowhere to move to after the tenant gave notice to the landlord and for the difficulty the tenant experienced in moving his belongings from the rental unit; as it was the tenants choice to end the tenancy the tenant cannot hold the landlord reasonable for any suffering caused as a result of this choice, unless the tenant can provide sufficient evidence to show the landlord acted in a manner contrary to s.28 of the *Act* that forced the tenant to end the tenancy prematurely. As the tenant has not met this burden of proof the tenant has not established how the landlord is responsible to compensate the tenant for any loss experienced in moving or any difficulties resulting in moving. Consequently, this section of the tenants claim is also dismissed without leave to reapply.

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$800.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: May 02, 2012.

Residential Tenancy Branch

