



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RPP, LRE, OPC, MND, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order, a monetary order, an order suspending the landlord's right to enter the unit and orders that the landlord comply with the Act and return the tenant's property. The landlord's cross-application was also heard and addressed a claim for an order of possession and a monetary order. Both parties participated in the conference call hearing.

At the hearing, the parties agreed that the tenancy would end on May 31, 2012. As the tenancy will be ending, the tenant withdrew all claims save the claim for compensation.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?
Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The rental unit is a bedroom located on the lower floor of a home in which the landlord occupies the upper floor. The lower floor houses a number of bedrooms, which are rented separately to different tenants who share a common bathroom and kitchen.

The parties agreed that on April 19, the landlord entered the rental unit, packed up the tenant's belongings and brought them to the tenant's workplace. The tenant testified that at approximately 11:30, his supervisor told him that someone was at the workplace who had something for him. The tenant discovered his belongings outside the workplace. He telephoned the police and went to the rental unit. The parties agreed that the police attended the unit and told the landlord that he had to allow the tenant to reside in the unit until he had an order of possession from the Residential Tenancy Branch. The tenant testified that he returned to work and brought as many of his belongings home with him that day as he could fit in his car, leaving the rest at his

workplace until he was able to retrieve them. The tenant testified that he was extremely embarrassed that this incident occurred in front of his colleagues and employer.

The tenant testified that when he went through his belongings, he discovered that a diamond earring and his cell phone were missing and that his DVD drive had been removed from his computer. He filed an application for dispute resolution requesting the value of the items as well as an additional award for lost time at work and stress and emotional damage. The tenant testified that on April 21, the day after he served the landlord with a copy of his application for dispute resolution, the landlord returned the missing cell phone to his room with a note that stated that it had been found in the bathroom. The tenant testified that he had never left the phone in the bathroom and stated that although it was in good working order when it went missing, it was non-functional when it was returned.

The landlord testified that the rental property is a recovery centre for addicts and that the tenant had been using drugs and drinking, which was prohibited by house rules. He stated that each month he told the tenant to move out if he wasn't going to follow the rules, but the tenant did not move. He stated that after being told by the police to allow the tenant back into the rental unit, he served him with a one month notice to end tenancy for cause. The landlord flatly denied having taken the tenant's diamond earring or telephone and also denied having removed the DVD drive from the tenant's computer. He submitted letters from other residents in which they stated that they saw the tenant wearing a diamond earring and using a cell phone after he claimed they had been stolen. The tenant responded that he had a second earring, which had a crystal rather than a diamond, that he wore after the theft and that the other tenants must have seen him using his other telephone, a Blackberry Pearl.

The landlord seeks a monetary order for emotional stress, lost time at work and general damages. He claimed that the tenant's use of drugs and alcohol in the unit has impacted his work as a recovery facilitator and that he eventually lost his job. He further claimed that the tenant has caused damage to the rental unit and common areas, bending screens, damaging locks, a doorbell and a gate, plugging the sink and bathtub, breaking an ornamental tree and causing water damage to tiles in the bathroom. The landlord provided what was purportedly an estimate from a third party for the cost of labour, including a \$20.00 estimate fee, totalling \$2,020.00. When I asked the landlord if any of the repairs had been effected, he replied that he had done most of the repairs himself, but could not replace the ornamental tree. The tenant denied having caused damage to the unit and argued that any of the occupants of the lower floor could have caused the damage.

Analysis

As the parties agreed that the tenancy should end on May 31, 2012, I grant the landlord an order of possession effective on that date. This order may be filed in the Supreme Court and enforced as an order of that Court.

Addressing the tenant's claim, overall I found the tenant to be truthful, answering questions directly and I found his version of events to be consistent. By contrast, I found the landlord's written and verbal evidence to be contradictory and some of the written evidence appeared to have been fabricated. For this reason, where the evidence of the tenant and the landlord conflict, I prefer the evidence of the tenant.

The landlord's actions in entering the rental unit, packing and removing his belongings were prohibited by the *Residential Tenancy Act*. The landlord acted with a flagrant disregard for the tenant's rights and the landlord's legal obligations. Although the landlord claimed that he did not take or damage the items in question, I find it more likely than not that he either deliberately or accidentally damaged the DVD drive and that he either took or lost the gold earring. I do not accept the landlord's explanation that he found the tenant's telephone in the bathroom. The tenant discovered the telephone missing on April 19 and used the bathroom several times between April 19 and April 21 when the landlord returned it to him, saying he had discovered it in the bathroom. I find it more likely than not that the tenant would have noticed the telephone in the bathroom on April 19 and 20 when he was using it. I also accept that the tenant has 2 earrings and 2 cell phones and that when other tenants observed him wearing an earring and using a cell phone after April 19, they were observing items which were different from those the tenant alleged that the landlord took. I find that the tenant is entitled to recover the value of the items in question.

I accept the \$399.00 replacement valuation of the diamond earring. As the tenant claimed just \$300.00 for this item, I award him \$300.00. Unlike the earring, the cell phone is an item which depreciates over time. The tenant claimed \$600.00 and I find that an award of \$200.00 will adequately compensate him and I award him that sum. The tenant originally claimed \$100.00 for the DVD drive, but at the hearing testified that he was able to replace the drive for \$20.00. I find that he is entitled to recover the replacement cost of the drive and I award him \$20.00.

I accept that the tenant lost work because of the landlord's illegal actions in attempting to evict him. The tenant provided a copy of the hours worked in the month of April. The document submitted shows that he typically works an 8 hour day and that on April 19, he worked just one hour and did not work at all on April 20. I find that the tenant is

entitled to recover 9 hours of missed work at a rate of \$13.50 per hour. I award the tenant \$121.50.

I find that the landlord's actions in illegally entering the rental unit, packing the tenant's belongings and moving them to his place of employment caused the tenant extreme distress and embarrassment and I find that an award for stress and emotional damage is appropriate. I find that an award of \$450.00, which is equivalent to one month's rent, will adequately compensate the tenant and I award him that sum.

As the tenant has been substantially successful in his claim, I award him \$50.00 which represents the filing fee paid to bring his application.

Turning to the landlord's monetary claim, I find that any emotional distress he suffered was as a direct result of his own illegal actions and failure to observe his obligations under the Act. If the tenant were causing the disturbances and damage alleged, the landlord had legal means at his disposal to address those issues. The landlord provided no evidence to show that he was receiving payment from a third party to work as an addictions counsellor or recovery facilitator and as there is no evidence that any of the other tenants who he claims are recovering addicts moved from the residential property as a result of the tenant's actions, I find insufficient evidence to support a claim for lost wages. I therefore dismiss the claims for emotional distress and lost income.

As for the landlord's claim for the cost of repairs, I do not accept that the written estimate is an authentic estimate. The document is handwritten in the landlord's own writing and it includes estimates for the cost of repairing items which the landlord testified that he repaired. I find it more likely than not that the landlord fabricated the estimate in order to increase the amount of his claim.

I find insufficient evidence to show that the tenant caused any of the alleged damage. The lower floor of the residential property is shared by a number of tenants, any one of whom could have caused the damage in question. While the landlord provided letters from other tenants in which they complained about the activities of the tenant, I note that the letters are identical in format and appear to have been authored by the landlord and I give them little weight. For these reasons, I dismiss the claim for the cost of repairs.

I note that while there was some testimony and documentary evidence as to whether the tenant had ordered a number of pay-per-view movies, this did not form part of the landlord's claim so I have not made findings on that issue.

Conclusion

The landlord is granted an order of possession based on the agreement of the parties.
The balance of the landlord's claim is dismissed.

The tenant is awarded \$ which represents the following awards:

Diamond earring value	\$ 300.00
DVD drive value	\$ 20.00
Emotional distress	\$ 450.00
Lost wages	\$ 121.50
Filing fee	\$ 50.00
Total	\$1,141.50

I grant the tenant a monetary order under section 67 for \$1,141.50. 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: May 11, 2012

Residential Tenancy Branch