



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, O, AS, CNE, CNR, MNDC, MT, OLC

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on May 7, 2012 for:

1. An Order allowing the tenant to sublet – Section 65;
2. An Order cancelling a Notice to End Tenancy – Section 46 and 48;
3. An Order allowing more time to make an application to cancel a notice to end tenancy – Section 66;
4. An Order that the Landlord comply with the Act – Section 62; and
5. A Monetary Order for compensation or loss - Section 67;
6. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on May 14, 2012 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters

Preliminary Matter 1: At the onset of the Hearing, the Landlord raised the Tenant’s application naming a 3rd Party as a Landlord. The Landlord states that the 3rd party is not the Tenant’s landlord but the upper tenant in the house containing the Tenant’s unit.

The Tenant does not dispute this statement. Given the evidence of the landlord, I accept that the second named person in the Tenant's application is not a party to the tenancy agreement and I therefore amend the Tenant's application to remove that party.

Preliminary Matter 2: The Tenant raised a second issue at the onset of the Hearing and states that on May 31, 2012, the Landlord entered the Tenant's unit without permission and removed the Tenant's belongings from the unit and placed them outside the house. The Tenant states that he wants his belonging but that since he was also forced out of the unit, he has not had time to find a new residence. The Landlord confirms that the Tenant's possessions are stored under tarps outside the unit under a balcony. The Landlord states that the gate to the yard is locked. Is it noted that the Landlord does not have an Order of Possession for the unit. The Tenant requests the return of his belongings.

Section 57 of the Act provides that a landlord must not take actual possession of a rental unit that is occupied by an over holding tenant unless the landlord has a writ of possession issued under the Supreme Court Rules. Section 62 of the Act provides that the director has authority to determine any matters related to a dispute in relation to an application for dispute resolution that arises under the Act. Given the authority under the Act, I amend the Tenant's application to include a claim for an order in relation to the Landlord's actions of May 31, 2012. Considering the undisputed evidence that the Landlord removed the Tenant and his belongings without an Order of Possession, I find that the Landlord breached the Act and that the Tenant is entitled to an order in relation to his belongings. As the Tenant has yet to find a rental unit to move in to, I order the landlord to secure the Tenant's possession is an enclosed, dry and secure environment until the Tenant is able to retrieve his possessions. Should the Tenant not be able to retrieve his belongings from the Landlord or if any items among the Tenant's possessions are missing or damaged, the Tenant is at liberty to make a claim for compensation.

Preliminary Matter 3: The Landlord states that he no longer requires an Order of Possession as the Tenant is no longer in the unit. The Tenant states that as a result of the end of the tenancy, he no longer is seeking an order to allow a sublet, an order cancelling the notice to end tenancy for unpaid rent, or an order requiring more time to make an application to dispute the notice to end tenancy. Accordingly, these claims are dismissed. The Tenant clarified that the claim to cancel a notice to end tenancy in relation to employment with the Landlord was made in error and withdraws that part of the claim. The Tenant clarifies that the claim for an order compelling the Landlord to comply with the Act is in relation to his claim for compensation.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The following is undisputed evidence: The tenancy began on February 1, 2012. Rent in the amount of \$775.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$387.50. The Tenant failed to pay rent for May 2012. The Landlord claims **\$775.00** for unpaid rent.

The Landlord states that the Tenant's unit was leased by a new tenant for June 1, 2012 but that the Tenant informed the Landlord on May 30, 2012 that the Tenant was not vacating the unit on May 31, 2012. The Landlord stated further that although the new tenant was to move into the unit on June 1, 2012, the new tenant would not move into the unit due to a smell in the unit and that the Landlords are now in the process of cleaning and repairing the unit for the new tenant. The Landlord claims lost rental income of **\$775.00** for June 2012.

The Tenant states that since the onset of the tenancy, the Tenant's right to quiet enjoyment of the unit has been breached and claims a total of **\$2,325.00** representing the amount paid for rent during the tenancy. The Tenant states that the upper tenant disconnected the power to his unit on one occasion and cut the phone landline.

The Tenant states that the police were called on several occasions between March 2012 and the end of the tenancy in relation to actions of the upper tenant. The Tenant provided the police file numbers for these incidents.

The Tenant states that near the end of March 2012 the upper tenant entered the Tenant's unit while the Tenant was not home and continued to do so on several occasions into April 2012. The Tenant states that he had placed powder around the unit and later found footprints and fingerprints. The Tenant states that the police have an open investigation for a break and enter and fraud by the upper tenant in relation to these incidents.

The Tenant states that the Landlord was informed of the problems at the beginning of April 2012 but that the Landlord failed to act. The Tenant states that initially the Landlord told the Tenant that the upper tenant would be gone by the end of April 2012 but by mid-April the Landlord informed the Tenant that the upper tenant would not be leaving. The Tenant states that the Landlord was asked to end the fixed term tenancy but refused to do so until May 14, 2012.

The Tenant states that as a result of the upper tenant's actions, the Tenant lost use of the internet for a period of nine days in April 2012. The Tenant states that the internet provider was unable to assist the Tenant in correcting the problem as his router is located in the upper unit. The Tenant states that initially the upper tenant allowed the Tenant into the upper unit to reset the password but that subsequently, and while the Tenant was away from the unit the access would again be disrupted. The Tenant states that the router disappeared by the end of April 2012. The Tenant states that as a result of the actions of the upper tenant, the Tenant's system was hacked into and evidence that was being gathered for this application disappeared. The Tenant states that

internet access is provided for in the tenancy agreement. The Tenant states that as a result of the internet problems his system was damaged and the Tenant had to incur a cost to repair his system and recover a small portion of his data. The Tenant claims compensation for these repairs in the amount of **\$1,917.50**. The Tenant provided an invoice for these costs. The Tenant also claims **\$40.00** for internet services but did not provide an invoice or bill for this claim.

The Tenant states that as a result of the entries by the upper tenant and the interference with the internet, the Tenant felt that his most valuable possessions were at risk and that these items, a motorcycle and electronics were moved and stored at a friend's house. The Tenant states that he has not been charged for this storage but believes that his friends should be compensated for storing these belongings and claims a combined amount of **\$130.00**.

The Landlord submitted a two page letter setting out their responses to the Tenant's claim. The Landlord states that the Tenant started smoking crack in April and that since that date has been behaving bizarrely. In the written submission the Landlord denies that the upper tenant was entering the Tenant's unit and denies telling the Tenant that the upper tenant would be evicted. The Landlords state that the upper tenant is their son who is currently on a methadone program. The Landlords state that three weeks after the tenancy started, the Tenant approached their son to obtain crack and that their son did provide the Tenant with crack or cocaine. The Landlords deny that any action by the upper tenant caused the Tenant to lose data or to require repairs to his computer system and argue that a virus may have caused the loss. The Landlords state that most of everything said by the Tenant is a lie and that the claims made by the Tenant were outrageous. The Landlords state that they were always willing to help the Tenant but did not understand him and they believe that the Tenant is verging on paranoid and psychotic behaviour as a result of the drug use.

The Landlords deny responsibility for the Tenant's problems with his computer and loss of data and believe that the Tenant got a virus or that the internet problems were a part

of his mental state. The Landlord states that the video submitted by the Tenant is evidence of the Tenant's behaviour that supports the Landlord's position about the Tenant. It is noted that during the Hearing, the Parties were informed that due to policy this data could not be viewed without the provision of a compatible player. This policy has since been clarified and a viewing of the Tenant's video has been attempted. This viewing was unsuccessful as the content of the disc is not compatible with the available equipment at the Residential Tenancy Branch.

The Tenant states that he did have a relapse in his drug use and that a good portion of his relapse is as a result of his environment. The Tenant states that the upper tenant is in active addiction and is a trigger for the Tenant. The Tenant states that he is currently obtaining help for his addiction.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, the right to reasonable privacy and freedom from unreasonable disturbance. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred or established.

In considering the testimony of both Parties, I find that the Tenant's testimony was persuasive in relation to disturbances by the upper tenant. Considering the overall evidence of the Landlord, I also find that the Landlords were aware of problems of the upper tenant as identified by the Tenant and that the Landlord failed to act in a reasonable manner to ensure the Tenant's right to quiet enjoyment of the unit. As such I find on a balance of probabilities that the Tenant's rights were breached and that the Tenant is entitled to compensation. Considering however that the Tenant did not inform the Landlord of the problems caused by the upper tenant until the beginning of March, I find that Tenant is entitled to a lesser sum than claimed and find the Tenant entitled to the amount of **\$775.00** in compensation.

Although the Tenant argues that the actions of the upper tenant and the lack of action by the Landlord caused the Tenant to lose data, among other technical problems, the Tenant provided no corroboration for this loss and considering the Landlord's argument that a virus may have been responsible, I dismiss the Tenant's claims in relation to the repair of the Tenant's computer or loss of data. As the Tenant did not incur any loss in relation to the storage of his belongings, I dismiss this claim. Accepting that the Tenant did lose 9 days of internet service, and noting that the provision of internet was not disputed by the Landlord, I find that the Tenant is entitled to **\$40.00** in compensation for this loss. I also find that the Tenant is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$865.00** (775.00 + 40.00 + 50.00).

Based on the undisputed evidence of unpaid May 2012 rent, I find that the Landlord is entitled to **\$775.00**. Although the Landlord claims a loss of rental income for June 2012, given the Landlord's oral evidence that a tenant was in place for June 1, 2012, and considering that the Landlord removed the Tenant and his belongings at the end of May 2012, I find that the Landlord has not provided sufficient evidence to show that the Landlord lost any amount of rental income from this tenant due to the actions of the Tenant. I therefore dismiss this part of the Landlord's claim. As the Landlord still retains the security deposit, I set the security deposit plus interest of **\$387.50** off the entitlement, leaving the remaining amount of **\$387.50** owing by the Tenant. Considering the actions of the Landlord in relation to the Tenant's removal from the unit, I decline to award recovery of the filing fee to the Landlord.

As the Tenant has been awarded **\$865.00**, the amount owing to the Landlord of **\$387.50** is set off the Tenant's entitlement, leaving **\$477.50** owing to the Tenant by the Landlord.

Conclusion

I **order** the Landlord to secure the Tenant's possession is an enclosed, dry and secure environment until the Tenant is able to retrieve his possessions.

I **grant** the Tenant an order under Section 67 of the Act for **\$477.50**. If necessary, this order may be filed in the Small Claims 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: June 06, 2012.

Residential Tenancy Branch