



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the tenant for a monetary order and orders compelling the landlord to comply with the Act and return his personal property and a cross-application by the landlord for a monetary order and an order permitting her to retain the security deposit. Both parties participated in the conference call hearing.

At the hearing, the tenant advised that he was unsure whether any of his personal property had been retained by the landlord and advised that he was no longer seeking an order that property be returned.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in November 2011, that monthly rent was set at \$375.00 and that the tenant paid a \$180.00 security deposit. The tenant alleged that the landlord resided in the rental unit and that he shared the kitchen and bathroom with her while the landlord testified that while her parents resided in the rental unit, she did not. The landlord's witness testified that the landlord did not reside in the rental unit but in a separate residence.

The parties agreed that on July 27, 2012, the landlord changed the locks on the rental unit and removed the tenant's belongings, placing them outside the unit. The tenant alleged that parts were missing from his desktop computer, his power cord was missing and his laptop did not function after having been moved. The tenant claimed that the laptop was approximately 2 years old, had cost \$700.00 and had functioned properly prior to the eviction.

The landlord testified that she moved the tenant's belongings carefully and stated that prior to the eviction, the tenant had told her that his laptop did not work. The tenant responded by saying that he had told the landlord that he could not make long distance calls on his laptop because he did not have the required application installed on it, but denied having told her that the laptop did not function.

The landlord's witness, S.Z., held herself out as a computer expert and claimed that she was there when the tenant's belongings were moved from the rental unit and that she observed that the desktop computer was already broken before it was removed and that the laptop was at least 7 years old. S.Z. acknowledged that she had not attempted to operate either device, but relied on a visual observation of the exterior of the units.

The tenant seeks to recover \$700.00 as the value of the laptop and an additional \$89.00 as the cost of repairing the desktop computer and replacing the power cord. He provided receipts totalling \$57.55 showing that between July 30 and August 18, he purchased 3 separate items from a computer store. The receipts do not show what was purchased, but the tenant testified that one receipt was for a power cord and the other two for other parts which had to be replaced. S.Z. argued that the amounts claimed were too small to replace computer parts.

The landlord claimed that the tenant failed to pay rent in the month of July. She provided a copy of a letter she wrote to the Ministry of Employment and Income Assistance (the "Ministry") and claimed that the tenant told her that the Ministry terminated his benefits, rendering him unable to pay rent in July. The tenant testified that he paid his July rent in cash and that the landlord had never given receipts throughout the tenancy. The landlord testified that she always provided receipts for cash payments.

The parties agreed that the tenant was responsible to pay for long distance telephone calls. They further agreed that the tenant made a payment several months ago, the landlord claiming that he paid \$60.00 and the tenant claiming that he paid \$55.16. The landlord provided statements of long distance charges for several months. Charges for calls made to the tenant's home country of Nepal totalled \$55.16 for the month of March. Charges for calls made to Nepal totalled \$25.06 for the month of April.

The landlord claimed that the tenant brought bedbugs into the rental unit and claimed that she had to remove the carpet and install hardwood in the unit as a result. Her written evidence included a statement from her parent in which the parent stated that he or she had paid \$100.00 for hardwood. The landlord claimed \$200.00 for hardwood. S.Z. testified that she lived in the rental unit prior to the tenancy's commencement and

stated that the unit had carpet at that time, but when she returned on July 27, hardwood had been installed.

The parties agreed that during the tenancy, the tenant burned food in the microwave. The landlord testified that while the microwave is still functional, she believes it is unsafe and has stopped using it. She claims \$20.00 for the value of the microwave. The tenant argued that the food would not have burned if the smoke detector in the unit had been working properly.

The landlord claimed that in addition to not having been paid rent for July, she lost rent for August because she was unable to find another tenant as the tenant did not give her notice that he was vacating the unit. She claims \$375.00 in lost income.

The landlord further claimed that the tenant was excessively noisy and threatened another tenant, which caused the tenant to give one month's notice and move out. The landlord claimed that she has not re-rented that room and has lost \$400.00 in income. The landlord provided a letter from the tenant who vacated the unit in which she stated that she moved because she did not feel comfortable around the tenant. She further stated that she was a temporary visitor in the country.

The landlord seeks to recover the \$50.00 filing fee paid to bring her application as well as the costs of photocopying, sending documents via registered mail and the cost of transportation to the Residential Tenancy Branch.

Analysis

The issue of whether the landlord resided in the rental unit must be addressed as the *Residential Tenancy Act* does not apply to tenancies in which the tenant shares a kitchen or bathroom with the owner of the unit. I find on the preponderance of the evidence that the landlord did not reside in the rental unit and accordingly I find that the tenancy falls under the jurisdiction of the Act.

Section 57(2) of the Act specifically prohibits landlords from evicting tenants without a writ of possession issued by the Supreme Court. Regardless of whether the landlord believed that the tenancy had ended or should end, she had an obligation to file a claim for an order of possession and proceed through legal means to evict the tenant. I find that the landlord acted illegally in removing the tenant's belongings and changing the locks to the rental unit. The tenant stated that his computers were intact and both in working condition prior to the illegal eviction and given the landlord's disregard for the law and failure to submit pictorial or video evidence showing the condition of the tenant's belongings, I prefer the evidence of the tenant over that of the landlord. While

the landlord's witness claimed that the computer was broken, I find it unlikely that she would have been able to determine from a visual inspection whether it was operational.

I find that the landlord damaged the tenant's computers and I find that the tenant is entitled to recover the \$57.55 spent on repairs and replacing the power cord. I accept that the computer had a value of \$700.00 at the time it was purchased, but I find that it has depreciated. I accept the tenant's testimony that the computer was 2 years old as I find it unlikely that S.Z. would be able to determine the age of the computer from a visual inspection. I find that an award of \$200.00 will adequately compensate the tenant for the laptop computer. I award the tenant a total of \$257.55 for his losses.

The tenancy ended on June 27 and the tenant provided his forwarding address to the landlord on August 7. Section 38 of the Act provides that within 15 days of the later of these events, the landlord must either return the deposit to the tenant in full or file an application for dispute resolution to retain the deposit. I find that the landlord failed to act within 15 days and is therefore liable under section 38(6)(b) which requires the landlord to pay the tenant double the amount of the security deposit. The security deposit was \$180.00 and I award the tenant \$360.00 which is double that amount.

Turning to the landlord's claim, I find it more likely than not that the tenant did not pay rent in July. The tenant claimed that the landlord illegally evicted him because he did not pay rent for the month of August, but because the landlord was of the opinion that the tenancy was supposed to end on July 15, I find it unlikely that she would have expected him to pay rent for August. Further, because the rent for August would not have been due until August 1, I find it unlikely that the landlord would have evicted the tenant on July 27, before the rent was due. The tenant has the burden of proving that he paid rent for the month of July and I find that he has not met that burden. Although he claims that the landlord did not give him receipts, he could have provided a bank statement showing that he withdrew cash on the date he claims to have paid the rent. I find that the landlord is entitled to receive rent for the 26 day period of time in which the tenant was able to occupy the unit. At a daily rate of \$12.10, I award her \$314.60 for unpaid rent for July.

Because the landlord illegally evicted the tenant, I find that she is not entitled to recover any amount for lost income for the month of August and I dismiss that claim. I further find that the tenant cannot be held liable for income lost as a result of the other occupant vacating the unit. The other occupant appears to have had a month-to-month tenancy, which means that the landlord had no reasonable expectation of income beyond one month. Further, the occupant was a temporary visitor, suggesting that the landlord could not have expected a long term tenancy. The claim for lost income due to the occupant vacating is dismissed.

The landlord claimed that she had to remove the carpet because of bedbugs, but provided no supporting evidence to corroborate her claim that the carpet had to be replaced rather than simply cleaned. The landlord's evidence is contradictory as she claimed to have spent \$200.00 while her parent claimed to have spent \$100.00. The landlord provided no receipts showing the cost of the hardwood flooring. For these reasons, I find that the landlord has not proven on the balance of probabilities that the carpet required replacement or the value of the replacement flooring and I dismiss the claim.

I find that the tenant damaged the microwave through his negligence as he had an obligation to monitor the microwave while cooking. Regardless of whether the smoke detector was functional, the tenant did not meet his obligation to take care when cooking. I find the landlord's claim for the decreased value of the microwave to be reasonable and I award her \$20.00.

I find that as the landlord has been partially successful, she should recover one half of the filing fee paid to bring her application and I award her \$25.00. I dismiss the claims for the cost of photocopying, travel and serving documents as under the Act, the only litigation related expense I am empowered to award is the cost of the filing fee.

Conclusion

The tenant has been awarded a total of \$617.55 which represents \$257.55 for damage to his computers and \$360.00 for double his security deposit. The landlord has been awarded a total of \$359.60 which represents \$314.60 in rent for July, \$20.00 for damage to the microwave and \$25.00 of her filing fee. Setting off these awards as against each other leaves a balance of \$257.95 payable by the landlord to the tenant.

I grant the tenant a monetary order under section 67 for \$257.95. 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 07, 2012

Residential Tenancy Branch