



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MND, MNR, MNSD, MNDC, FF, ET, O
Tenant: MNDC, MNSD, FF

Introduction

These hearings dealt with cross Applications for Dispute Resolution with parties seeking a monetary order.

Both hearings were conducted via teleconference and attended by the landlord and the tenant. The landlord's witness attended only the September 25, 2012 hearing although she was available for the October 30, 2012 she was not called to provide testimony.

The parties agreed the tenancy ended as a result of a previous hearing where the parties mutually agreed to end the tenancy on July 19, 2012 and the landlord confirmed there is no longer a need for an order of possession. As such, I amended the landlord's Application to exclude the matter of possession.

At the outset of the original hearing the landlord testified he was unaware the tenant had filed an Application for Dispute Resolution. The tenant testified that he had sent the landlord three sets of registered mail related to his Application and that all but one has been returned as unclaimed. Tracking information confirmed the tenant served the landlord but that all were not claimed.

While I accepted the tenant served the landlord in accordance with the *Residential Tenancy Act (Act)* I also acknowledged the landlord is not prepared to address the matters outlined in the tenant's Application. As such, I adjourned the tenant's Application to be heard at a future date. I ordered the tenant to re-serve the landlord with his Application and evidence prior to the reconvened hearing.

The landlord testified at the 2nd hearing that he had not received the tenant's original Application or evidence as per my order above. The tenant testified, first, that he served the landlord with his Application and evidence via registered mail on October 18, 2012.

The tenant then testified, after I asked why he had waited until October 18, 2012 to serve this when the last hearing had been on September 25, 2012, that he had served his Application and evidence on September 28, 2012 by registered mail and provided a tracking number.

The landlord confirmed he received 2 pieces of mail from the tenant but that neither one included the tenant's Application or evidence. The landlord stated that one of the pieces of mail was the tenant's forwarding address and one was his request to amend his Application.

I note as well that on October 1, 2012 the Residential Tenancy Branch (RTB) received from the tenant a request dated September 28, 2012 to amend his Application and on October 22, 2012 copies of some emails and a handwritten note dated October 18, 2012.

As these dates coincide with the dates the tenant states he served the landlord with his Application and evidence and based on the landlord's testimony, I find the tenant has failed to serve the landlord with his Application and evidence as per my above order and I therefore dismiss the tenant's Application with leave to reapply.

Further, any evidence the tenant has submitted in regard to his claim or in response to the landlord's claim other than that noted above received by the RTB on October 1, 2012 and October 22, 2012 will not be considered in response to the landlord's Application, I have relied solely on the tenant's testimony in this decision.

In addition, later on in the original hearing the tenant testified that he just received the landlord's evidence on September 21, 2012 and was not prepared to respond to the evidence, specifically in regard to the landlord's claim for travel costs. The tenant did provide testimony with regard to the landlord's claim for rent for July and August 2012 and for move in and move out fees.

The landlord testified he served the tenant by courier originally on July 27, 2012 to the forwarding address provided by the tenant which was the dispute address and that he again served the evidence by courier in late September 2012 to the tenant's place of employment.

As the landlord had failed to serve the tenant with his hearing package through allowable methods under the *Act* I ordered the tenant could provide his rebuttal to the landlord's and his agent's testimony at the opening of the reconvened hearing, after the tenant has had a chance to review the evidence.

I also ordered that testimony on the rent and moving in and moving out fees was concluded and I would not entertain further testimony at the reconvened hearing.

In relation to the value of the landlord's claim, the landlord outlined at the start of the original hearing that his claim included rent in the amount of \$2,898.00; travel and home depot expenses of \$1602.84; the moving in and moving out fees of \$500.00; and a fan in the amount of \$500.00.

I pointed out that these items amounted to \$5,500.84 over the amount noted on the landlord's Application. As the landlord had stated \$5,000.00 on the Application that is

all I allowed for the landlord to claim under this Application so the landlord removed the compensation for a fan. Therefore the landlord is at liberty file a separate Application for Dispute Resolution claiming for compensation for a fan.

At the outset of the 2nd hearing the tenant testified that he had not received any of the landlord's 2nd evidence package containing email evidence and as such I have not considered this package of evidence in this decision.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for unpaid rent or utilities; for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the Act.

Background and Evidence

The landlord provided a copy of a tenancy agreement for a 1 year and 2 day fixed term tenancy beginning on April 27, 2012 for the monthly rent of \$1,499.00 due on the 1st of each month with a security deposit of \$750.00 paid.

The landlord seeks compensation for travel expenses incurred as a result of many trips from his home community to the community where the rental unit is located to deal with rent and late rent payments; issues raised by the tenant or for inspections. The landlord submits that he spent \$1,602.00 for transportation; meals and paint and ionizer.

The paint and ionizer was used in the rental unit to deal with the smell of smoke in the rental unit at the start of the tenancy. The landlord did not provide a receipts for his claim but did provide a print out from his bank account confirming these expenditures.

The landlord testified the tenant had failed to pay a moving in fee to the strata at the start of the tenancy and a moving out fee at the end of the tenancy. The tenant testified that he had paid the moving in fee but did not provide any testimony regarding the moving out fee.

The landlord testified the cheque used by the tenant for the moving in fee had been returned as insufficient funds and the rent cheque for July 2012 was also returned for insufficient funds. The tenant testified that he paid rent for July 2012 and submitted a copy of a cheque issued on July 1, 2012 for rent.

The landlord testified that he had issued the tenant a 10 Day Notice to End Tenancy for Unpaid Utilities on June 20, 2012 and a 10 Day Notice to End Tenancy for Unpaid Rent on July 13, 2012 because of the return of the tenant's cheques for the moving in fees and the rent for July 2012.

The landlord also seeks lost rent for the month of August 2012 because the tenant would not allow any potential tenants in to view the rental unit while he was still in possession of the rental unit. The tenant testified that he never refused to let anyone view the rental unit.

The tenant testified that the landlord had given his contact information out to people and some of the people contacted him to view the rental unit but the tenancy wasn't over so the landlord did not have the right to show the rental unit to other tenants and so he did not allow anyone to view the unit. The tenant acknowledged receiving the 10 Day Notice of June 20, 2012 and filing an Application to dispute the notice that resulted in the hearing of July 17, 2012.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find the tenant has demonstrated throughout his testimony that his testimony is not reliable, and as such I accept the landlord's testimony that despite issuing cheques for the moving in fee and the rent for July 2012 the cheques were returned as insufficient funds and as a result, I find the landlord has suffered a loss for both of these items resulting from a violation of the tenancy agreement.

In addition, I accept in the absence of any testimony from the tenant disputing payment and on the balance of probabilities, the tenant has also failed to pay the moving out fees and I find the landlord has therefore suffered a loss resulting from a violation of the tenancy agreement.

Further and despite his contradictory testimony, I accept the tenant felt the tenancy was not over and as such did not allow people who the landlord had provided his contact information to access to the rental unit. Therefore, I find the landlord had made reasonable attempts to re-rent the rental unit prior to the end of the tenancy but that those attempts were hampered by the tenant's deliberate actions.

As a result, I find the tenant is responsible for the payment of lost revenue that the landlord has suffered by failing to be able to rent the rental unit to coincide with the ending of this tenancy.

While I find it likely that the tenant did not cooperate with the landlord for matters requiring the landlord to unnecessarily attend the rental unit on numerous occasions the

landlord did have an agent available to deal with on site issues and it was the landlord's choice to attend in person. I cannot find the tenant should be responsible for choices in property management that the landlord has made. I dismiss this portion of the landlord's Application.

In relation to the landlord's claim for paint and ionizer, I find the landlord has failed to provide any evidence or testimony as to why this should be the responsibility of the tenant and I dismiss this portion of the landlord's Application.

While the tenant testified in the hearing that the landlord failed to complete a move in or move out inspection and that the landlord has extinguished his right to claim against the deposit and regardless of the landlord's testimony that he did complete a move in inspection but that the tenant was not available for a move out inspection, both Sections 24 and 36 restrict that extinguishment to claims for *damage to the rental unit*. As the landlord's claim is primarily related to unpaid and lost rent and other fees I find extinguishment is not relevant to the landlord's claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,548.00** comprised of \$1,499.00 rent owed; \$1,499.00 lost revenue; \$500.00 moving in and out fees and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$750.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,798.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: October 30, 2012.

Residential Tenancy Branch