



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for a monetary order for return of all or part of the pet damage deposit or security deposit.

The hearing took place over the course of 3 dates. The tenant and the landlord both attended the hearing on all dates, gave affirmed testimony and the parties provided evidentiary material in advance of the hearing but not all evidence was provided within the time required under the *Residential Tenancy Act* and Rules of Procedure, and were not provided within the time ordered after the first day of the hearing.

The tenant also called 4 witnesses who gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witnesses on the testimony and evidence provided, all of which has been reviewed and is considered in this Decision, with the exception of late evidence which was not consented to and was not provided as ordered.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to a monetary order for return of all or part or double the amount of the pet damage deposit or security deposit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on November 22, 2007 and ended on August 25, 2010. Rent in the amount of \$950.00 per month was payable at the end of each month, however there is no written tenancy agreement. On November 20, 2007 the landlord collected a security deposit from the tenant in the amount of

\$475.00 and on November 23, 2008 the landlord collected a pet damage deposit from the tenant in the amount of \$475.00. Both deposits are still held in trust by the landlord.

The tenant further testified that the rental unit is on top of a commercial building and the tenants in the lower suite moved out. The landlord found new tenants but they wanted both rental units, and the landlord agreed. The landlord issued a notice to end tenancy, and on August 23, 2010 the tenant filed an Application for Dispute Resolution seeking to have the notice cancelled. The landlord was served with the application the same day by posting it to the landlord's door. On August 25, 2010 at 8:30 a.m. the landlord's agents attended the rental unit, and the landlord arrived there at 9:00 a.m. The tenant served the landlord with the application again that day. The tenant went into the rental unit and closed the door. The landlord tried to get in by putting his foot in the door. The landlord was irate and said that the tenant had no right to stop the landlord's eviction notice. About 15 laborers were there to move the tenant out. The landlord and the foreman of the laborers grabbed the tenant and the parties toppled backwards at the entrance and the tenant was able to get away. The tenant locked the door of the rental unit and called 911, during which time the tenant heard the door getting kicked in and the phone went dead. The tenant went to the balcony and jumped up onto the roof of the building, and got down via a retaining wall. The tenant went to a payphone across the street and again phoned 911, remaining at the payphone until the police arrived. The police told the parties that it wasn't their jurisdiction but that the tenant could go to civil court. The tenant's cat was still in the rental unit, and the police assisted in getting the landlord's consent for the tenant to retrieve the pet.

During this time, the laborers were shoving the tenant's belongings into bags and nothing was properly packed. The landlord told the tenant that if the tenant returned, there would be big trouble. The tenant's items were taken to a storage locker and the landlord retained the key. The landlord unlocked the storage locker only after the tenant paid the landlord for the storage costs. The tenant had set up a meeting with the landlord for September 6, 2010 to retrieve the key for the storage unit but the tenant had to pay the landlord \$287.00 before the landlord would allow the tenant to see what was placed in the storage unit belonging to the tenant. The tenant paid that amount to the landlord for storage fees and the tenant gave the landlord a copy of a receipt which contained the tenant's forwarding address. The copy given to the landlord had a note asking for return of the security deposit and pet damage deposit but the landlord would not accept it. The tenant claims double the amount of both deposits.

On September 7, 2010 the landlord attended the tenant's spouse's place of employment and delivered a document summarizing the disposition of the deposits. The document states that the tenant would not be getting back the security deposit. The tenant asked

the spouse to write a letter to the landlord with a forwarding address. The spouse told the tenant that the letter had been sent, but the tenant did not keep a copy.

The tenant also testified that the new tenants are bikers. During the first weekend of August, 2010 the tenant witnessed a For Lease sign on the building and heard the landlord talking to the new tenants about the new tenancy, that they couldn't wait, and the landlord told them that the tenant would be out in August and they would take over the tenancy on September 1, 2010.

The tenant provided large evidence packages containing letters, photographs, notes, advertisements and receipts. The tenant also provided a copy of a document purporting to be an agreement to end the tenancy stating that it was received in the landlord's evidence package and contains a signature of the tenant, but the tenant did not sign the document and testified that the signature is forged.

The tenant claims the cost of hydroponic equipment, tools, lights, and Mercedes parts, none of which arrived at the storage unit. Many of the items had been in a storage locker within the rental unit complex, but were not located in the storage unit that the tenant paid the landlord for. Further, the items in the storage unit were not packed and were randomly strewn about and piled high. The tenant provided photographs of the storage locker to illustrate the lack of care taken. The tenant has provided a Monetary Order Worksheet setting out the costs of replacement of the hydroponic equipment totalling \$12, 593.41. Further pages of the Monetary Order Worksheet have been provided listing tools and other hardware materials and each page contains a total, being \$666.45, \$1,083.75, \$66.28, as well as a list of electronics totalling \$2,110.96, a list of antiques totalling \$2,949.00, a list of antique Mercedes Benz parts totalling \$3,432.00, a list of glass blowing equipment totalling \$1,512.00, a list of colognes totalling \$535.00, and kitchen items totalling \$6,624.14.

The tenant's first witness testified to being with the tenant the first time the storage unit had been opened after the tenant's belongings had been placed in it. The witness testified that the witness would have been "choked" if the witness' belongings had been moved with such lack of care. It was a mess; right to the face of the roll-up door. The tenant tried to get in, but it was a mess.

The tenant's second witness testified that the witness attended the tenant's rental unit to visit on August 25, 2010 and saw a big pile of the tenant's belongings in the parking lot where the witness would usually park when visiting. The witness described a mountain of the tenant's belongings, recognizing the tenant's foosball table at the top and furniture all in a big pile. The witness did not see any boxes. The witness was in shock.

The tenant's third witness said that the witness has known the tenant for about 20 years. The tenant was a glass blower and has witnessed the tenant producing glass blowing art. The witness has seen the tools and products required, including metal tubes, forceps, heavy-duty gloves made of Kevlar or asbestos, and other equipment.

The tenant's fourth witness was the spouse of the tenant however the parties separated during the month of August, 2010. The witness testified that a pet deposit was paid to the landlord, and after the eviction, the witness sent a letter to the landlord with the tenant's forwarding address.

The witness also testified that there was hydroponic equipment in boxes in the storage locker at the rental unit that was brand new and worth over \$10,000.00.

The witness further testified to signing a document agreeing to vacate the rental unit about a week or 2 after the witness had already vacated. The witness was worried about safety issues between the landlord and the tenant and testified that it was a very stressful situation. A copy of the agreement was provided for this hearing, and it is not dated and does not contain an effective date of vacancy. The document states that the witness "...grants access to the rental unit to the landlord, for the purpose of removing all possessions belonging to the witness and the tenant, and granting the landlord and agents permission to remove the possessions belonging to the witness and the tenant. The agreement also states that the possessions will be placed in a delivery vehicle and transferred to a reasonable destination of the landlord's choosing, and then unloaded by the landlord or agents. The time and date will be of the landlord's choosing, and will be preceded by at least 48 hours written notice. All expenses related to the cleaning of the rental suite, rental of the delivery vehicle and the employment of the agents are to be borne by the landlord. That by signing the agreement, the tenant is bound by its term." The witness' name is printed at the bottom of the form and it contains a signature of the witness, but no other parties. Another document has been submitted as evidence by the tenant which states: "NOTICE TO TENANT On Tuesday, August 23, I, the Landlord, and several hired agents will be entering the rental suite, for the purpose of removing the possessions belonging to you, the tenant. Please be informed that this notice constitutes the 48 hours prior written notice required under the agreement signed on Friday August, 20. Sunday August 22, 2010." The landlord's name is printed and signed on the bottom of the form.

The landlord testified that on or about August 12, 2010 the tenant's rent cheque was returned because the tenant had stopped payment, and the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or utilities by posting it to the door of the rental unit. The landlord had urged the tenant's spouse to move out because they were having trouble paying the rent. The landlord and the tenant's spouse entered into an

agreement to vacate and in exchange the landlord would pay to have the tenant's vehicle repaired. The landlord paid \$694.40 for the repair, and provided a copy of the receipt as evidence.

The landlord presented the agreement which had been prepared by the landlord, and the tenant signed it. During cross examination the landlord testified that the parties had been to dispute resolution wherein the landlord was successful in obtaining an Order of Possession. A copy of that was not provided for this hearing but the landlord has provided a copy of a Decision which states that the Order of Possession is effective November 20, 2008. When asked why the landlord would offer a written agreement for the tenant to sign if the landlord already had an Order of Possession, the landlord testified that it was thought that the Order of Possession had expired because the landlord didn't act on it and collected rent after its effective date.

The tenant had asked for an additional day before departing, and the landlord agreed. The landlord hired 4 people who got to the rental unit first. When the landlord arrived, the tenant said, "This is bullshit." The tenant then ran and the landlord and hired people continued with the move. The police arrived and found no evidence of an assault.

The landlord further testified that care was taken during the move, and to the landlord's knowledge nothing was damaged. The landlord did not open the locker again after the tenant's items were placed in it; the tenant paid the landlord for the locker and the landlord retrieved the lock and left. The landlord testified that it is not true that any of the tenant's possessions were taken or stolen. The landlord had asked the police about what to do with hydroponic equipment, and they told the landlord to dispose of it. There were wires, junction boxes in 3 or 4 Dairyland crates, but nothing new and no bulbs. The landlord took the items to the local landfill.

The landlord gave a document to the tenant's spouse entitled "Summary of Disposition of Damage Deposit." The document shows \$4,560.00 in unpaid rent, 30 months of hydro owing totalling \$2,250.00, 30 months of gas bills owing totalling \$3,000.00; drywall repair in the amount of \$750.00, removal and disposition of narcotic production equipment for \$300.00; \$600 to clean the rental unit, less the \$475.00 damage deposit, leaving a balance owing to the landlord in the amount of \$10,985.00. The document is dated September 7, 2010 and is signed by the landlord.

The landlord further denies ever receiving a pet deposit from the tenant.

Analysis

Firstly, with respect to the tenant's application, the *Residential Tenancy Act* states that claims for damages must be made within 2 years. The undisputed testimony is that the tenancy ended on August 25, 2010 and the tenant's application was filed on August 1, 2012, and I find that the application has been filed within the 2 year time limit.

With respect to the security deposit and the pet damage deposit, the *Residential Tenancy Act* requires a landlord to return both deposits or file a claim against them within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either, the landlord must be ordered to pay the tenant double the amount of such deposits. I accept the undisputed testimony of the tenant that the tenant personally gave the landlord a document that contained the tenant's forwarding address on September 6, 2012. The landlord refused to take the document, but the tenant did what was required under the *Act*. The landlord refused to accept it, but I find that the landlord did receive the tenant's forwarding address in writing on that date and the landlord has failed to comply with the *Residential Tenancy Act*, and the tenant is entitled to double recovery of the \$475.00 security deposit. I am also satisfied that the landlord refused to return the security deposit as evidenced by the landlord's document delivered to the tenant's spouse at a place of employment which sets out a claim by the landlord as a reason for not returning the security deposit, which was not applied for at dispute resolution.

I am not satisfied that the tenant has provided sufficient evidence that the landlord collected a pet damage deposit. The tenant stated that it was paid on November 23, 2008 but provided no proof of that payment. The tenant's spouse testified that one was paid but did not specify an amount or a date of such payment. The landlord denied receiving it. The onus is on the claiming party to prove the claim, and in the absence of corroborating evidence where a claim is disputed, I must find that the tenant has failed to establish that claim. I find that the tenant has established a claim as against the landlord in the amount of \$950.00 for double the amount of the security deposit and no pet damage deposit.

With respect to the balance of the tenant's claim, I have no doubt that the landlord has breached the *Residential Tenancy Act* by moving the tenant out of the rental unit. The landlord has provided copies of agreements that I find are not lawful, contain no effective date, are not dated at all, and are unconscionable. The tenant has denied signing the document and the tenant's spouse testified to signing an identical copy a week or 2 after moving out of the rental unit.

The *Act* states that any attempt to avoid or contract outside the *Act* is of no effect, and is therefore unenforceable. The *Act* also specifies how a tenancy ends:

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];
 - (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
 - (c) the landlord and tenant agree in writing to end the tenancy;
 - (d) the tenant vacates or abandons the rental unit;
 - (e) the tenancy agreement is frustrated;
 - (f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

In this case, paragraphs (a) and (b) do not apply, nor do paragraphs (d) or (e). The landlord testified that the Order of Possession obtained at dispute resolution was not acted upon because the landlord thought it had expired due to collection of rent after its effective date. The landlord certainly did not act on it legally, which would have been to obtain a Writ of Possession and seek the assistance of a Court Bailiff to properly move the tenant out.

The landlord claims a mutual agreement applies and the tenant denies ever signing the agreement. Section 57 (2) of the *Act* specifies:

The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

The *Act* also sets out the consequences for failing to comply with the *Residential Tenancy Act*:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Having found that the landlord has failed to comply with the *Act* by moving the tenant out of the rental unit without the tenant's legal consent, and by ending a tenancy contrary to the *Act*, I must find that the landlord is required to compensate the tenant for damage or loss that has resulted from the breach.

I have also reviewed the photographs provided by the tenant, and considering the testimony of the tenant and witnesses, I further find that the landlord and the landlord's agents took absolutely no care in moving the tenant's belongings. Items were not packed in boxes and were literally strewn about in a storage unit or piled high in a parking lot. The photographs and testimony have satisfied me that the tenant's items were ultimately thrown into a storage unit.

I am not able to ascertain the value or exactly what items were damaged or missing, although I am satisfied that numerous items were damaged or missing. The tenant has provided numerous documents that are unorganized and make little sense with respect to what items were damaged, missing or their value. I do find, however, that the tenant ought to be compensated for the storage locker cost that the tenant paid to the landlord, and I grant a monetary order in favour of the tenant in the amount of \$287.00. With respect to the balance of the tenant's claim, I find that the tenant is entitled to aggravated damages.

In determining the quantum of damages suffered by the tenant, I consider that the tenant's application claims \$25,000.00. The tenant provided Monetary Order Worksheets that I have added and find total \$24,948.85.

Aggravated damages have been awarded in a vast array of amounts from \$1.00 as a nominal amount to acknowledge a wrong-doing, to hundreds of thousands of dollars for pain and suffering. The jurisdiction of residential tenancy claims is \$25,000.00. To determine quantum for breach of the *Act* I must consider pain and suffering, as well as inconvenience caused by the landlord's actions. The tenant was ripped from a home that was rented, items moved to a location that the tenant could not access without paying the landlord more money, was required to go through a storage unit strewn with belongings in order to ascertain what actually arrived at the storage locker some days or weeks later, and had to find accommodation elsewhere. I am also satisfied that there were items damaged and very possibly some missing. Because I am not satisfied that all the items in the worksheets have been proven to be missing, damaged or their value,

I do find that the tenant has established a claim for aggravated damages inclusive of all items missing or damaged, in the amount of \$10,000.00.

In summary, I find that the tenant has established a claim as against the landlord in the amount of \$950.00 for double return of the security deposit, \$287.00 for reimbursement of the storage unit rental that the tenant paid the landlord for, and \$10,000.00 in aggravated damages, inclusive of all items missing or damaged as a result of the landlord's illegal eviction.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$11,237.00.

This order is final and binding on the parties and may be enforced.

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: December 27, 2012.

Residential Tenancy Branch