



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

At the hearing, the tenant advised that she had received the landlord's evidence on March 8, 2013, 5 days before the hearing, and stated that she had not had opportunity to submit any documents in response. I asked the tenant whether she was requesting an adjournment to allow her to submit a response and she insisted that she wanted the hearing to proceed as she wanted no further delays.

At the outset of the hearing, I explained to both parties that the hearing would proceed with no interruptions, yet throughout the hearing both parties repeatedly interrupted each other, calling the other names, and were generally difficult to control. At several points during the hearing I muted both parties to give them an opportunity to calm down before proceeding. I repeated my instructions a number of times during the hearing, reminding parties not to interrupt each other, but to no avail.

The tenant also insisted on giving testimony regarding issues which were irrelevant to the landlord's claim. I explained several times to the tenant that because I had only the landlord's claim before me, I could not address the claims that the tenant stated she intended to make against the landlord. The tenant resisted any attempts to focus her testimony on relevant issues.

Approximately 50 minutes into the hearing, the tenant became extremely combative and would not stop talking to permit the landlord to speak. I advised the tenant that if she would not observe the rules which I had very clearly set out respecting interruptions and if she would not allow the landlord to speak, I would not permit her to participate in the hearing. At this point, the tenant used another telephone to place a call to the Cabinet Minister responsible for housing. I asked the tenant whether she intended to participate in the hearing and she stated

that she would participate after she had complained to the Cabinet Minister and she again became uncontrollable. At this point, the tenant was again muted and when she was returned to the call, she disconnected without making further comment.

The only part of the landlord's claim to which the tenant did not respond is the claim for loss of income.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The only issues on which the parties agreed was that the tenancy began in June 2012 and that the tenant paid a \$435.00 security deposit.

The landlord testified that the tenant was served with an order of possession on November 15, 2012 and provided a copy of a sworn affidavit by the process server to that effect. The tenant acknowledged having received the order and testified that she filed for a review of the decision with the Residential Tenancy Branch. On November 27, she received word that her review had been denied. On November 26 the landlord obtained a writ of possession and on November 29 retained a bailiff to enforce the writ. On November 29 the tenant filed a petition in Supreme Court for a stay of proceedings and on the same day was granted a stay of proceedings effective until December 31. By the time the tenant was granted the stay, the bailiff had already removed her belongings from the unit. In response to the stay of proceedings, the landlord gave the tenant access of the unit. The tenant voluntarily vacated the unit on December 7, 2012.

The landlord seeks to recover the \$120.00 cost of the writ of possession and bailiff fees in the amount of \$2,478.75.

The landlord testified that when the tenant vacated the rental unit, she did not clean the unit, removed bulbs and fuses, poured paint on the carpet and badly damaged countertops and other areas of the unit. The landlord provided an invoice for \$550.00 for cleaning and an invoice for \$1,950.00 for repainting, repairs and replacement of the carpet, all costs which he seeks to recover. The tenant claimed that the evidence package she received from the landlord did not contain a copy of the cleaning invoice and although I questioned her about whether it contained a copy of the repair invoice, she did not give me a clear answer, but repeatedly asserted that the landlord was attempting to deceive me.

The tenant denied having left the unit in an unclean condition and further denied any knowledge of paint on the carpet. She acknowledged having removed fuses from the unit but stated that she had purchased those fuses herself and stated that anything else which was missing must have been taken by the bailiff. The tenant focused her testimony on the condition of the unit at the outset of the tenancy. The move-in condition inspection report (the "Move-In Report") states that the unit was "IN A PERFECT CONDITION – NEW FLOOR, CARPET, FAUCETS (EVERYWHERE)" (reproduced as written). The tenant first claimed that she there was no inspection of the unit completed and no report generated, but when I asked her whether the signature on the Move-In Report was hers, she acknowledged that it was. I asked her to explain how she signed a document that she had just said did not exist and she stated that she had signed a report, but that it was completely blank. When I asked her why she would sign a blank report, she replied that she is 70 years old. The landlord insisted that the report was not blank at the time the tenant signed it.

The move-out condition inspection report (the "Move-Out Report") lists comments in nearly every section indicating that the unit was dirty and that items were damaged. The tenant's signature appears on the report. The tenant testified that she signed the report, only to realize later that she shouldn't have. The tenant again claimed that the move out report had no comments written on it, but only a series of check marks.

The landlord seeks \$4,800.00 in rental income which he claims to have lost as a result of the tenant's actions. At the outset of the hearing, while the tenant was still in attendance, the landlord produced a witness, J.G., who testified as to what he had observed. J.G. testified that he resided one floor below the tenant on the same side of the building. He stated that he occasionally encountered the tenant and that she would ask him what he thought about the landlord, that she told him there was a petition going around to try to have the landlord removed, and accusing the landlord of sexual assault and sexual harassment. J.G. further testified that on one occasion as he was returning to the building, he encountered people waiting outside who had plans to meet with the landlord to view an apartment. J.G. testified that he heard the tenant tell the tenants that they did not want to live in the building as it had cockroaches and because the landlord had set up secret cameras.

The tenant was given opportunity to cross-examine J.G. and after having done so, testified that she had never met him. The tenant testified that she didn't know anything about secret cameras in the vents and the fire alarm and that the petition in question was circulated several years before her tenancy began. The tenant asked J.G. for his address, advising that she intended to subpoena him for a Supreme Court action she was advancing against the landlord. I advised the tenant that I would not compel J.G. to provide contact information.

The landlord provided a written letter from another tenant, M.P., who advised the landlord that she was vacating her unit because she had received a letter from the tenant which contained

threats. In that letter she stated that should the tenant be evicted, she would consider moving back into the building. The landlord also provided a copy of the letter which was left on M.P.'s door. In the letter, the tenant accuses M.P. of perjuring herself and of stalking the tenant and she demanded an apology. The letter also outlines the complaints to public officials which the tenant had made about M.P. The tenant disconnected from the call before responding to the evidence from M.P.

The landlord also provided a letter from a prospective tenant, C.T., in which he stated that he attended at the building on September 23 to view an apartment. In the letter, C.T. states that he met an elderly woman who "made a lot of accusations about you, your bad ... conduct and the miserable condition in what the building may be". C.T. went on to state that the woman had said that if he moved in, he would "surely regret the movement in there forever." C.T. stated that he wondered why she would not move out if she was so unhappy. The tenant disconnected from the call without responding to the evidence from C.T.

The landlord testified that there are 3 units which he was trying to re-rent which were affected by the tenant's actions. He claimed that unit 203, which rented at a rate of \$880.00 per month, was vacant for September, October and November and that he knew of two occasions on which he arranged to meet prospective tenants who were gone by the time he got to the front of the building. The landlord further claimed that apartment 302, which rented at a rate of \$850.00 per month, was vacant for September and October and that apartment 104, which rented at a rate of \$680.00 per month, was vacant for September and October. The tenant disconnected from the call without responding to this testimony.

Analysis

The landlord filed for a writ of possession upon learning that the tenant's review application had been dismissed and I find that he was entitled to do so. It is clear that the landlord received the writ prior to the tenant having made her application for judicial review and I find it more likely than not that the bailiff had started or even completed his work prior to the tenant having filed her petition for judicial review. I therefore find that the landlord is entitled to recover the costs of obtaining the writ and retaining bailiffs as there was no legal impediment to him doing so. I award the landlord \$2,598.75 which represents \$120.00 for the cost of obtaining the writ and \$2,478.75 as the cost of retaining bailiffs.

I have difficulty believing the tenant's testimony that she signed a blank condition inspection report. I find it very unlikely that she would do so, and am inclined to believe the landlord's testimony over that of the tenant as the tenant originally would not admit that a Move-In Report had even been generated until confronted with the fact that her signature appears on the report.

With respect to the Move-Out Report, I note that the tenant's signature appeared not in the area available to sign indicating that she agreed that the report accurately represented the condition of the rental unit, but where she agreed to proposed deductions from the security deposit. The report indicates no deductions from the security deposit and I find that the tenant's signature on the report does not indicate that she agreed with the report's representation of the condition of the unit at the end of the tenancy.

While I accept that the rental unit was in good condition at the outset of the tenancy, I find the parties did not agree on the condition of the unit at the end of the tenancy and I find the Move-Out Report to be unreliable. The landlord provided invoices to show the cost of repairs, but provided no photographs which would have proven the claims he made with respect to paint having been spilled on the carpet and damage to other areas of the unit.

When I asked the landlord what date the work was performed, the landlord insisted that the invoices presented correctly indicated the date on which work was completed. The invoices show that the unit was repainted, repairs completed and carpet replaced on January 10 and that the unit was cleaned 2 days later, on January 12. The cleaning invoice shows that countertops were cleaned, but I find it unlikely that cleaning soiling left behind by the tenant would have occurred after a repair. The cleaning invoice shows that the blinds were cleaned on January 12, but the repair invoice shows that window coverings were replaced on January 10.

Given the conflict between the invoices and the lack of evidence to corroborate the condition of the rental unit at the end of the tenancy, I find that the landlord has failed to prove this claim and the claim for cleaning and repair costs is dismissed.

Turning to the landlord's claim that the tenant had interfered with his attempts to rent certain units in the building, I accept the testimony of J.G. as I found his testimony to be precise, consistent, credible and not given to exaggeration. Although the tenant claimed that she did not know him, I find it likely that she simply did not recall him as their interactions would likely have had a greater impact on him than on her. I note that while J.G. simply stated that the tenant had told the prospective renters that there were hidden cameras, the tenant in her cross-examination specifically stated that she knew nothing about cameras hidden in vents and fire alarms. I find in mid-September, the tenant told prospective renters that the building had cockroaches and that the landlord had hidden cameras. However, I note that J.G. testified that those tenants proceeded to view the unit despite the tenant's statements.

I accept the written statement of M.P. and I find that she moved out as a direct result of having received a letter from the tenant. However, as the only threat in that letter was a threat of litigation and as it appears to be the only letter the tenant gave to M.P., I cannot find that it constituted harassment or would have forced M.P. to move.

I accept the written statement of C.T. and I find that the tenant told him that the building was in poor condition and made derogatory remarks about the landlord. However, there is no indication in C.T.'s letter that the tenant's remarks had any impact whatsoever on his decision not to rent the suite, I do not find that evidence compelling.

I accept the landlord's testimony that on 2 occasions he went to meet prospective tenants at the front of the building only to find that they had left. As there may have been any number of reasons why prospective tenants may not wait to view a unit after having viewed the exterior of a building, I find that does not prove that the tenant in some way persuaded them to leave.

While I accept that 3 units were vacant for several months, I am not satisfied on the balance of probabilities that the failure to re-rent those units can be directly attributed to the tenant. For that reason, I dismiss the claim for recovery of lost income.

As the landlord has been only partially successful in his claim, I find it appropriate to award him one half of the filing fee paid to bring his application and I award him \$50.00.

Conclusion

The landlord is awarded a total of \$2,528.75 which represents the cost of obtaining a writ, retaining bailiffs and half of his filing fee. I grant the landlord a monetary order under section 67 for this sum. 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: March 13, 2013

