



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order authorizing her to retain the security deposit. Both parties participated in the conference call hearing.

At the outset of the hearing, the tenant argued that the matters at issue were outside the jurisdiction of the Residential Tenancy Branch citing a previous decision issued by the Branch on January 4, 2013. In the January decision, the Arbitrator dismissed the tenant's claim for the return of funds paid pursuant to a contract of purchase and sale, finding that that contract fell outside the jurisdiction of the Act. The Arbitrator addressed the remainder of the tenant's claim, however, which suggests that he found that there was part of the relationship between the parties which fell within the jurisdiction of the Act.

I explained to the tenant that I found that there was jurisdiction and the hearing proceeded to hear the landlord's claim as those issues clearly fell within the jurisdiction of the Act.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties were in agreement on the following issues. The tenant used to own the property, but sold it to the landlord in the summer of 2012 and moved into a basement suite, planning to stay for several months. The landlord did not reside in the rental unit during the time the tenant resided there. In a previous hearing which took place on November 19, 2012, the parties settled the matters at issue and agreed that the tenant

would surrender vacant possession of the unit at 6:00 p.m. on December 1, 2012. The Arbitrator rendering that decision issued an order of possession to that effect.

The parties also agreed that the landlord undertook significant renovations to the residential property and that the tenant had stopped residing in the rental unit by October. The parties worked together to cover the tenant's belongings with plastic as there was a period of time in which the walls were removed and the rental unit was open to the elements.

The landlord eventually closed off the rental unit and installed new locks on the door. The tenant was not given keys to the new locks, but it apparently was not an issue as the parties arranged for times to meet at the unit so the tenant could move his belongings. The landlord helped the tenant move items from the rental unit to the truck.

The landlord testified that the parties had arranged to meet at the unit in the morning of December 1 so the tenant could complete moving out of the unit, but that the landlord contacted the tenant to arrange a later time to meet on that date. The tenant had advised the landlord that he would arrive at the rental unit at whatever time he chose.

The tenant testified that he arrived at the unit at some time before 10:00 a.m., before the landlord arrived. The tenant discovered that the landlord was not there and that the workmen at the site would not grant him access to the unit, so he kicked in the door to the unit. The tenant also telephoned police, who attended at the unit and arrested the tenant. The landlord arrived at the unit at approximately 10:00 a.m. as the tenant was being removed.

The landlord seeks to recover the \$265.77 cost of replacing the door frame, which represents \$145.77 for materials and \$120.00 for 3 hours of labour. The tenant maintained that he should not be responsible for this cost as the landlord had no right to lock him out of the rental unit.

The landlord also seeks to recover \$124.72 in unpaid utilities for the month of September. The tenant acknowledged that he was responsible to pay for utilities for that month and did not dispute the amount claimed, but testified that he should not have to pay the utilities as residing in the unit in September was like "living in hell".

The landlord seeks to recover \$50.00 as the cost of removing the tenant's discarded belongings, including items in the refrigerator, and an additional \$62.00 as the cost of dumping a number of pieces of furniture, including 2 couches and 3 bookcases. The tenant testified that he did not know whether the items in question were his because they were so damaged by dust and moisture. The landlord argued that because the

landlord had not yet moved into the rental unit, the only items of furniture on the residential property belonged to the tenant. The landlord further stated that the items may have been affected by dust, but that there should have been no damage from moisture.

The landlord also seeks recover of the filing fee paid to bring this application.

Analysis

I find that the tenant was contractually bound to pay for utilities during the month of September. While he may have believed that the landlord was treating him badly, this belief does not excuse him from his contractual obligations. As the tenant did not dispute the amount of the utilities claimed, I find that the landlord is entitled to recover \$124.72 and I award her that sum.

Under normal circumstances, a landlord is not entitled to change the locks to a rental unit prior to the time the tenant has vacated the rental unit. However, in this case, it is clear that the tenant had acquiesced to the changing of the locks as he appears to have agreed to the arrangement between the parties for the month of October in which they would meet at the rental unit whenever the tenant needed to access it.

I find that the tenant's actions on the morning of December 1 were extreme and inappropriate in the circumstances. While I can appreciate that the tenant had arranged for people to assist him in the move and the fact that the landlord was not present when he arrived at the rental unit was annoying, this did not give him the right to kick in the door. I find that the tenant must be held liable for the damage. I find that the landlord's claim is reasonable and I award the landlord \$265.77.

I find that the tenant should reasonably have known that the items in the refrigerator and the personal items and furniture throughout the rental unit belonged to him and I find that he should have removed those items at the end of the tenancy. I find that his failure to do so caused the landlord to incur dump fees as well as time to remove the items and I find that the landlord's claim is reasonable. I award the landlord \$50.00 for the cost of removing the items and \$62.00 for dump fees.

As the landlord has been wholly successful in her claim, I find that she should recover the filing fee and I award her \$50.00.

Conclusion

In summary, the landlord has been successful as follows:

Unpaid utilities	\$124.72
Door replacement	\$265.77
Labour to remove discarded items	\$ 50.00
Dump fee	\$ 62.00
Filing fee	\$ 50.00
Total:	\$552.49

The landlord has been awarded a total of \$552.49. I order the landlord to retain the \$500.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$52.49. 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: April 12, 2013

Residential Tenancy Branch

