



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with cross-applications. The landlord applied for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant applied for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, return of the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The hearing was held over two dates in order to provide both parties the opportunity to present their claims and provide responses to the claims made against them. Both parties appeared on both dates.

Issue(s) to be Decided

1. Is the landlord entitled to compensation for damage and cleaning and loss of rent in the amount claimed?
2. Did the tenant establish an entitlement to compensation for moving costs, additional housing costs, and loss of quiet enjoyment, as claimed?
3. Disposition of the security deposit.

Background and Evidence

The tenancy commenced July 13, 2012 for a fixed term set to expire July 31, 2013. The tenant paid a \$440.00 security deposit. The tenant was required to pay rent of \$885.00 on the 1st day of every month. The landlord issued a 1 Month Notice to End tenancy for Cause to the tenant on December 30, 2012 with a stated effective date of February 1, 2013. The tenant did not file to dispute the 1 Month Notice and vacated the rental unit on January 31, 2013.

The tenant and the landlord's wife participated in a move-in inspection together and a report was prepared. The landlord invited the tenant to participate in a move-out inspection for January 31, 2013 at 1:00 p.m. by way of a written letter dated January 13, 2013. The tenant responded to the landlord's letter by way of his own letter dated January 30, 2013 although the landlord did not receive the letter until after the move-out inspection was completed. The tenant did not participate in the move-out inspection. Rather, he left the keys in the unit. The landlord conducted the move-out inspection without the tenant present.

Landlord's claim

The landlord is seeking compensation of \$1,860.65 comprised of the following:

Loss of Rent – February 2013	\$ 885.00
Cleaning and repairs – labour and material	914.63
Filing fee for this Application	50.00
Registered mail costs for hearing documents	<u>11.02</u>
Total claim	\$1,860.65

The tenant was agreeable to the claim for cleaning and repairs with the exception of a \$7.83 charge for new sealant in the bathroom. The tenant submitted the paint and caulking was damaged and peeling around the tub due to no fault of his and he had asked for this to be repaired during his tenancy. The landlord submitted that the tenant was responsible for the bathroom needing to be repainted and that sealant was a necessary step in repainting the bathroom.

The parties were in dispute as to the tenant's obligation to compensate the landlord for loss of rent for February 2013. The landlord submitted that due to the condition the rental unit was left by the tenant the unit could not advertised or shown to prospective tenants until the unit was fully repaired and cleaned. The landlord testified that the repairs and cleaning were completed on February 12, 2013. Although the landlord acknowledged that normally he starts advertising a unit during the last month of tenancy he chose not to in this case as he was of the position the tenant would be un-cooperative. When asked to provide examples of uncooperative behaviour by the tenant the landlord submitted that:

- The tenant disagreed with the landlord when the landlord informed the tenant he was disturbing another tenant;
- The tenant called the police about the downstairs tenant's conduct; and,

- The tenant ranted at the landlord over the telephone about how he was a good tenant and denying responsibility for disturbing the downstairs tenant.

Both parties provided consistent testimony that there were issues between the tenant and the tenant below concerning noise. The tenant living downstairs had complained the tenant was making too much noise and in response the tenant living downstairs would hit his ceiling with a broom handle.

Both parties provided consistent testimony that the landlord repeatedly informed the tenant he was making too much noise and disturbing the tenant below. However, the tenant was of the position he was only making normal daily living sounds and his work hours meant he was usually up at night and sleeping during the day. Further compounding the issue of noise transference was the fact the building an older building of wood frame construction with hardwood floors.

Although the tenant did not agree with the landlord's reasons for issuing the eviction notice the tenant chose not to dispute the Notice due to the ongoing conflict with the downstairs tenant and the landlord.

Tenant's claim

The tenant submitted that moving from the rental unit was necessary to escape the frequent angry encounters with the landlord. The tenant submitted that the landlord shouted and used foul and abusive language toward the tenant in multiple occasions, and in the presence of his son. The landlord even challenged the tenant to a physical fight.

The tenant is seeking compensation from the landlord in the sum of \$4,869.00 comprised of the following:

Additional rent for subsequent living accommodation	\$ 1,440.00
Moving costs	809.00
Two month's rent (\$885.00 x 2)	1,770.00
Harassment	800.00
Filing fee	<u>50.00</u>
Total claim	\$ 4,869.00

The landlord acknowledged that he had acted aggressively with the tenant and even called him an arrogant idiot and a pig but the landlord denied using foul language or challenging the tenant to a physical fight.

I noted that during the hearing, the landlord presented himself as very stubborn, defensive and argumentative in response to my instructions and questions during the hearing.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything presented to me I provide the following findings and reasons with respect to each of the applications before me.

Landlord's Application

A tenant is required to leave a rental unit reasonably clean and is responsible for repairing damage they caused. Normal wear and tear is not considered damage under the Act. The tenant was agreeable to the landlord's claims for labour and material for damage and cleaning, except the cost of sealant. Sealant has a limited useful life and its longevity usually depends upon its installation. Sealant generally needs replacement due to aging and normal wear and tear every few years. I find I was not satisfied the tenant is responsible for the cost of new sealant and I reject that portion of the landlord's claim. Therefore, I award the landlord the remainder of the labour and materials claimed in the amount of $\$914.63 - 7.83 = \906.80 .

Upon review of the photographs of the unit as it was left by the tenant I accept that the landlord spent 12 days cleaning and repairing the unit and removal of abandoned possessions. Therefore, I grant the landlord's request for loss of rent, in part, for an amount equivalent to 12 days which is $\$379.29$ [$\$885.00 \times 12/28$ days].

I dismiss the landlord's request for compensation for the entire month of February 2013 as I am not satisfied the landlord took reasonable steps to mitigate the loss of rent. In particular, the landlord's decision to not advertise the unit for rent in January 2013 virtually guaranteed that the unit would be vacant in February 2013. I find the landlord's reasons for not advertising the unit largely unfounded. Rather, I find that what the landlord described as the tenant being "uncooperative" was actually the tenant disagreeing with the landlord's perspective on noise a tenant may make at certain times of the day or night. Based upon my observations during the hearing, I find it more likely that it was the landlord that was uncooperative due to his stubbornness and refusal to consider the tenant's right to use the rental unit for normal living activities. Ultimately, I failed to see how the disagreement between the parties with respect to noise levels translated into an assumption by the landlord that the tenant would otherwise interfere with showing of the unit to prospective tenants.

The landlord is still in possession of the tenant's \$440.00 security deposit. The landlord may retain the security deposit as the tenant forfeited his right to its return by not participating in the move-out inspection; however, the security deposit reduces the sum of the landlord's actual losses. Therefore, I have taken into account the security deposit held by the landlord in calculating the total award to the landlord.

The Act provides that an Arbitrator may order recovery of the filing fee; however, other costs incurred to file and participate in a dispute resolution proceeding are not recoverable. Therefore, the landlord is not entitled to recover the registered mail costs from the tenant.

Further below in this decision I shall provide my decision with respect to recovery of the filing fees paid by each of the parties.

In light of the above, the landlord is entitled to recover the net amount of \$846.09 from the tenant [calculated as \$906.80 + \$379.29 – \$440.00] and I award that amount to the landlord.

Tenant's Application

Section 28 of the Act provides every tenant with the covenant of quiet enjoyment. This includes the right to exclusive possession of the rental unit free from unreasonable disturbance and use of common areas without significant interference. Residential Tenancy Policy Guideline 6: *Right to Quiet Enjoyment* provides information with respect to a tenant's right to quiet enjoyment, a landlord's obligation to preserve this right, and examples of what constitutes a loss of quiet enjoyment.

The policy guideline provides, in part:

- **Harrassment**

Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”.³ As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment.

- **Claim for damages**

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

Given the landlord’s demeanor during the hearing and the landlord’s acknowledgement that he acted aggressively toward the tenant and called the tenant names, I find the tenant has demonstrated that the landlord “engaged in a course of vexatious comment or conduct that is known or ought reasonably known to be unwelcome” – the definition of harassment. Therefore, I find the landlord breached the tenant’s right to quiet enjoyment.

The tenant has requested compensation of \$800.00 for harassment on part of the landlord and I note that this amount represents nearly a month’s worth of rent. I find this claim is rather high in the circumstances described to me. I find a more reasonable award to be \$400.00 and I award the tenant that amount.

I dismiss the remainder of the tenant’s claims for compensation for the following reasons:

- The tenant is paying more for his new accommodation and that may likely be attributed to a unit that is larger, with more amenities, and/or better location.
- The tenant chose not to dispute the 1 Month Notice or file an Application for Dispute Resolution seeking Orders for compliance and chose to move out of the rental unit based upon the 1 Month Notice.
- I find no basis under the Act to award the tenant the equivalent of two month’s rent under the Act.

Filing fees and Monetary Order

Given both parties were partially successful in their Applications, each party shall bear the cost of their own Application.

Pursuant to section 72 of the Act I offset the tenant's award against the landlord's awards and provide the landlord with a Monetary Order in the net amount of:

Amounts awarded to landlord	\$846.09
Less: Tenant's award	<u>(400.00)</u>
Monetary Order for landlord	\$446.09

To enforce the Monetary Order the landlord must serve it upon the tenant and the landlord may file it in Provincial Court (Small Claims) to enforce it as an Order of the court if the tenant does not satisfy the Monetary Order within a reasonable time.

Conclusion

Both parties were partially successful in their Applications. The amount awarded to the tenant has been offset against the landlord's awards and a Monetary Order in the net amount of \$446.09 has been provided to the landlord.

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: June 26, 2013

Residential Tenancy Branch