



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the tenant and the landlords.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation because the landlord ended the tenancy for their personal use; for compensation for losses incurred as a result of the tenancy; for all or part of the security and pet damage deposits and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 51, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on May 1, 2011 as a month to month tenancy for the monthly rent of \$1,100.00 due on the 1st of each month. The tenant submits that he paid a security deposit of \$550.00 and a pet damage deposit of \$550.00. The landlord submits that the tenant only paid a security deposit of \$550.00. Neither party provided any documentary evidence to confirm their position.

The tenancy ended on May 19, 2013 after police were called and the tenant was physically removed from the property. This removal included the removal of the tenant's truck by having it tow away. The parties agree the tenant has never provided the landlord with his forwarding address.

The tenant submits that the landlord gave the tenant the wrong notice to end tenancy, in that the landlord provided a 1 Month Notice to End Tenancy for Cause but that the

landlord should have provided him with a 2 Month Notice to End Tenancy for Landlord's Use of Property because the landlord wanted to sell the property.

The tenant submits that because this was the landlord's true intention the tenant should receive compensation in an amount equivalent to 2 month's rent in accordance with the *Act*.

The landlord acknowledges that they informed the tenant when he entered into the tenancy agreement that they intended to sell the property in a year or two and when they advised him that they were going to put on the market he provided them with a notice, by email dated April 8, 2013, that he intended to move out of the property by May 16, 2013. The tenant indicated in the email that he did not want to deal with selling of the property.

When the tenant continually refused to allow the landlord access to the rental property the landlord issued the tenant a 1 Month Notice to End Tenancy for Cause on April 15, 2013 with an effective date of May 16, 2013. The landlord states she chose this date as it was the same date as the tenant indicated he wanted to end the tenancy.

When the tenant had not vacated the residential property in accordance with either his notice to end the tenancy or the landlord's the landlord called the police who determined that the tenancy had ended and despite attempts to negotiate with the tenant the police used a battering ram to break down the door. The tenant fled; the police pursued the tenant and was apprehended by police.

The landlord submitted the police tried to get the tenant to remove his truck from the property and when that failed they called a tow truck and had it removed from the property.

The tenant submits it was the landlord who had the truck removed. The tenant also seeks compensation for \$800.00 worth of tools (air compressor; aluminum sawhorses; and a shop vacuum) and \$200.00 worth of cleaning supplies, including shovels; rakes; and odds and ends.

The landlord submits that the tools had been available to the tenant any time after the end of the tenancy and despite attending the property to serve the landlord's husband with documents related to this dispute the tenant chose not to retrieve them at that time. The landlord has since disposed of the items.

In relation to the tenant's claim for cleaning supplies the landlord submits that there was one large bottle of Pine Sol and nothing else, the tenant did not provide any evidence to establish that he ever possessed cleaning supplies in the amount of \$200.00.

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.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the tenant has not provided the landlord with his forwarding address the landlord is under no obligation to return the tenant's security deposit. Likewise as the landlord still does not have the tenant's forwarding address I find that the tenant is not entitled to double the amount of the deposit.

In regard to the amount of the security deposit and pet damage deposit, it is incumbent on the party making the claim to provide sufficient evidence to establish the value of his loss. As the tenant submits that he paid the landlord a security deposit of \$550.00 and the landlord agrees, I accept the tenant paid this amount.

As to the tenant's submission that he also paid a pet damage deposit of \$550.00 I note that the landlord dispute this claim. As such, it is the tenant's burden to provide evidence to corroborate his claim that he paid such a deposit. As the tenant has failed to provide any additional evidence to substantiate this claim, I find the tenant has failed to establish that he paid a pet damage deposit.

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant

receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if:

- i. The rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;
- ii. A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family member owns, all the voting shares;
- iii. All conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give a notice because the purchaser or a close family member intends in good faith to occupy the rental unit;
- iv. The landlord has all the necessary approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- v. The landlord intends to convert the residential property to strata lots or a not-for-profit housing cooperative;
- vi. The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent for the residential property; or
- vii. The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use.

Section 51 of the *Act* states a tenant who **receives** a notice to end tenancy under Section 49 (landlord's use of property) is entitled to receive from the landlord compensation equivalent to one's month rent payable under the tenancy agreement.

As the tenant did not receive a notice to end tenancy under Section 49 but rather a notice under Section 47 after the tenant provided his own notice to end tenancy under Section 45 I find the tenant is not entitled to compensation for receiving a notice to end tenancy under Section 49.

In relation to the tenant's claim for the costs associated with the towing of his truck, I find that the truck was hauled away as a result of the tenant's actions and that it was ordered by the police. As such, I find the landlord's cannot be held responsible for the costs associated with the towing.

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement the non-complying party must compensate the other party for damage or loss that results. The Section goes on to state that a party who claims compensation for that non-compliance must do whatever is reasonable to minimize that loss or damage.

As to the claim for loss of tools, I find the tenant had many opportunities to retrieve the tools and failed to take any action to try to retrieve them. In addition the tenant has failed to provide any evidence to establish the value of these items. As such, I find the tenant has failed to provide evidence that he took any steps to mitigate the loss. In addition I find the tenant has failed to establish that he ever had \$200.00 worth of cleaning supplies on the property and I therefore dismiss this portion of his claim.

Conclusion

Based on the above, I dismiss the tenant's Application in its entirety. I grant leave for the tenant to reapply only for return of the security deposit only after he has provided the landlord with his forwarding address in writing. I do not grant leave for the tenant to reapply for any other matter in this Application.

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: August 27, 2013

Residential Tenancy Branch

