



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed for an order to keep the security deposit in partial satisfaction of the claim, for a monetary order for money owed or compensation under the Act or tenancy agreement and to recover the filing fee for the Application.

The Tenant filed for a monetary order for compensation under the tenancy agreement or the Act, for the return of the security deposit under section 38 of the Act, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary Issues

The hearings for these matters commenced on August 26, 2013. That hearing was adjourned as it was found that the Landlord did not serve the Tenant with her amended Application and evidence, and the Tenant had not served the Landlord with her evidence. The parties were ordered to provide these to each other by registered mail. At the second hearing, on October 10, 2013, the Landlord explained she had not received a copy of the Tenant's Application. The Tenant disputed this saying she had served the Landlord. The second hearing proceeded on the Landlord's claims alone and the matter was adjourned for the Tenant to serve the Landlord with her Application. The hearings concluded on November 28, 2013.

Issue(s) to be Decided

Is the Landlord entitled to the monetary relief sought?

Is the Tenant entitled to return of double the security deposit or other monetary relief?

Background and Evidence

This tenancy, and the hearings that arose from the dispute between the parties, were significantly complicated by the fact that at the outset of the tenancy the Tenant was in a relationship with the Landlord's son. Some months after the tenancy began the relationship between the Tenant and the Landlord's son ceased. It was clear throughout the proceedings that the parties had developed a distinct dislike for each other. Because of the soured past relationship, the parties testified and submitted a great deal of irrelevant evidence. Therefore, I only record the relevant portions of the evidence in this decision.

The Landlord claims the Tenant moved into the rental unit at a greatly reduced rent due to her relationship with her son. The Landlord submits that the normal rent for the unit was \$860.00, but she only charged the Tenant \$560.00 per month, due to this relationship. The parties first entered into a six month fixed term tenancy agreement and then into a second, month to month tenancy agreement, with different rent amounts.

The Landlord explained she went to a great deal of trouble to help the Tenant at the beginning of the tenancy, due to the Tenant's relationship with her son. The Landlord explained she bought cleaning supplies for the Tenant and supplied her with some other household items.

The Landlord did not perform an incoming condition inspection report. The Landlord testified she did not do this as the Tenant was a minor, so she did not think it would be valid. Despite this the Landlord provided the Tenant with a second written tenancy agreement, and on October 1, 2011, the parties entered into a month to month tenancy. The rent was \$760.00, payable on the first day of the month. The Tenant paid the Landlord a security deposit of \$380.00 on October 1, 2011. I note that no interest is payable on deposits held from 2009 to the present.

The Tenant testified she had agreed to this new rent and tenancy agreement. On April 30, 2013, the Tenant gave the Landlord a one month Notice to End Tenancy. The Tenant vacated the rental unit on or about May 27, 2013. On May 31, 2013, the

Landlord and the Tenant performed an outgoing condition inspection report. The Tenant did not agree to the Landlord's report and wrote this on the condition inspection report as well as noting she left the rental unit cleaner than when she found it.

By the time of the outgoing condition inspection report, the relationship between the Landlord and the Tenant had deteriorated to the point that the police were called to attend and keep the peace. There were various allegations made by each of the parties about the behaviour of the other party at the time of the outgoing condition inspection report.

The Landlord's Claims

The Landlord claims for December 2012 rent from the Tenant. The Landlord testified that she lost the cheque given to her by the Tenant for December rent, in the amount of **\$760.00**. The Tenant acknowledged she had provided the Landlord with a rent cheque for December of 2012, and that the Landlord has not cashed it.

The Landlord claims the Tenant left the rental unit unclean and it took two weeks to clean it. The Landlord claims **\$400.00** for loss of rent for a half month. I note the Landlord is seeking a higher rate of rent than what the Tenant had been paying for this loss of rent claim, which is not allowed.

The Landlord claims the Tenant failed to clean the blinds and claims **\$33.60** for this. A receipt is included.

The Landlord claims **\$235.00** for cleaning the rental unit. In evidence the Landlord provided a copy of a receipt and a letter from the person who conducted this cleaning. This person sets out in this letter that they witnessed the outgoing condition inspection report, the condition of the rental unit at the time she left and that she returned to clean the rental unit.

To support these claims, the Landlord has provided photographs of the rental unit in evidence.

The Landlord claims the Tenant had a second occupant reside in the rental unit with her. The Landlord claims the second occupant had mail sent to her at the rental unit address and had keys to the building and the subject rental unit. Once the Tenant had vacated the building the Landlord had the locks changed on the rental unit and in the common areas, and had 48 new keys cut to supply to the other renters in the building. The Landlord claims **\$365.47** for the rekeying.

In reply to the Landlord's claims, the Tenant testified that she had to clean the rental unit when she moved in, as the previous renter had left it very unclean. She explained the Landlord had provided her with cleaning supplies for this.

The Tenant alleged that the photographs the Landlord took of the rental unit were taken prior to her being completely moved out. The Tenant testified that the photographs show much of her property is still in the rental unit at the time the photos were taken. She testified she did a lot of cleaning after the pictures were taken. She testified that the Landlord had given her a notice that she was showing the rental unit to prospective renters, and then entered the rental unit when the Tenant was away and took the pictures.

However, the Tenant agreed that she did not clean the blinds, as she could not figure out how to get them off the window. The Tenant also agreed she did not move the fridge out and clean behind it.

The Tenant denied that she had any keys cut for a second occupant in the rental unit. The Tenant testified this person was a guest for a short period of time and that she loaned this lady her spare set of keys. The Tenant explained this person had some important mail directed to the rental unit as she did not want it sent to her place.

The Tenant's Claims

The Tenant claimed the Landlord refused to return her bicycle and the Tenant claimed **\$825.92** for the bicycle.

A significant amount of time was spent on the issue of the bicycle at these hearings. In the first hearing the Landlord explained the Tenant's bicycle was being held by her son in a storage locker in the building. The Landlord testified she had no control over the bicycle and the Tenant should seek its return from her son.

The Tenant had also gone to the son's place of employment to seek the return of the bicycle and the son informed the Tenant, through a co-worker, he would only communicate with her by registered mail.

I note that at the conclusion of the first hearing, I had ordered the Landlord to return the bicycle to the Tenant. The Landlord testified she had no control over the bicycle as her son had it in storage and she had no key for this locker.

I note the Landlord's son provided a letter in evidence that directly contradicted this testimony. The son wrote that his mother, the Landlord, had the key for the storage locker and that he had asked her for the key but she refused to give it to him.

At the time of the second hearing the bicycle had still not been returned to the Tenant. At the conclusion of this hearing I again order the Landlord to return the bike to the Tenant. The Landlord again tried to argue she had no control over the bicycle.

At the outset of the third hearing the Tenant testified she had received her bicycle back.

The Tenant testified that because she did not have the bicycle she had to use the bus and this cost her **\$364.00**. The Tenant did not provide any receipts in support of this amount.

The Tenant was claiming for the return of the double the security deposit in the amount of **\$760.00**. The Tenant claimed the Landlord had failed to return the deposit to her or inform her that she was keeping the deposit. I note that the Landlord amended her Application on June 14, 2013, to claim against the deposit and this is within the 15 days allowed under the Act.

The Tenant claimed **\$220.00** in labour to clean the rental unit at the outset of the tenancy. The Tenant testified the rental unit was very dirty and required extensive cleaning when she moved in.

The Tenant claims the Landlord failed to make repairs to the rental unit despite the Tenant's repeated requests to do so. The Tenant testified she had a leak under the kitchen sink which required her to turn off the water supply whenever it was not in use. The Tenant testified she left a note in the Landlord's mailbox asking for a repair to the sink in January of 2013. The Tenant testified she recorded the dates in a notebook and it took the Landlord 43 days to have someone come in and repair the leak.

The Tenant testified there was also a problem with the toilet in the one bathroom in the rental unit. She testified she had to reach into the toilet in order to flush the toilet and make sure it was not running afterwards. The Tenant testified she has Crohn's disease, which affects her bowels, and therefore it was more than just a minor inconvenience to not have a functioning toilet. The Tenant testified that after she notified the Landlord of this problem it took 38 days for the Landlord to repair this.

For the two maintenance issues the Tenant requests **\$760.00** for the equivalent to one month of rent for the lack of maintenance.

The Tenant claims **\$237.06** for two storage locker fees and for a U-Haul rental. The Tenant testified that she had to incur these expenses since the Landlord forced her to move out of the rental unit early, because of the Landlord's behaviour in the month of May of 2013.

The Tenant claims **\$950.00** for loss of quiet enjoyment of the rental unit. The Tenant testified that the Landlord entered the rental unit multiple times without giving her the required notice to enter. The Tenant also testified about an instance where the Landlord tried to force her way into the rental unit when the Tenant was home. The Tenant testified that the Landlord yelled insulting remarks to her through the door. The police were called to attend in this instance.

The Tenant also testified that the Landlord insulted the Tenant's guests when they were in the hallway.

The Tenant testified that the Landlord would leave garbage in front of the rental unit door and claim it was the Tenant's and had not been placed in the correct area for garbage. The Tenant testified she witnessed the Landlord putting this garbage in front of her door.

The Tenant testified that at another time the Landlord sent 49 text messages to the Tenant's phone.

For the above claims the Tenant seeks \$950.00.

In reply to the Tenant's claims, the Landlord testified she had returned the bicycle as she had been told to do. She testified the Tenant could have had the bicycle back in August if she had only followed her son's advice to contact him by registered mail.

The Landlord alleged that the Tenant tried to assault her during the outgoing condition inspection report and that is why the police had to be called.

The Landlord testified that the Tenant had told her son about the leaking kitchen faucet and did not tell her for sometime about it. She testified it might have been after January 1, 2013, when he told her about this.

The Landlord testified she gave all the renters in the building a note in January of 2013, asking them to check their units for running water. The Landlord testified she could hear running water in the building and was trying to locate the source. She testified that the Tenant gave her no written notice about problems in the rental unit.

The Landlord testified she did not force the Tenant to move out of the rental unit early. She testified that one of the storage lockers claimed for by the Tenant was in the name of the lady who allegedly occupied the rental unit with the Tenant for a period of time. The Landlord alleged this person was a roommate of the Tenant's as this person had mail sent to the rental unit in her name.

The Landlord testified that she believed that if the Tenant was so miserable during the tenancy she should have moved out. The Landlord questioned why the Tenant would stay in the rental unit if it was so bad.

The Landlord testified that she did go to the Tenant's door to talk to her about the missing December rent cheque, as the Tenant had requested a reference for her new rental unit. She alleged the Tenant slammed the door in her face. The Landlord denied insulting the Tenant in the hallway.

The Landlord agreed she sent the Tenant some 49 text messages, as she was trying to get the Tenant to pay the December rent. The Landlord testified she was also concerned about the alleged second tenant in the rental unit.

In reply, the Tenant denied she ever tried to assault the Landlord. She explained she pointed a finger and yelled at the Landlord because the Landlord had insulted her mother at the time of the move out condition inspection report.

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 sections 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.

In this instance, the burden of proof is on the each of the parties to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the claiming party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the party did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Landlord's Claims

I find the Landlord is entitled to rent in the amount of **\$760.00** for December 2012 rent. Based on the Tenant's testimony, I find the Tenant failed to clean the blinds in the rental unit and did not clean behind the fridge, I allow the Landlord **\$33.60** for the blinds and the nominal amount of **\$25.00** to clean behind the fridge.

I dismiss all the other claims of the Landlord. I found that the Landlord's evidence lacked credibility. I find the Landlord contradicted her own testimony and the evidence several times. For example, on the bicycle issue the Landlord had testified at the first hearing that she had nothing to do with the bike and that despite it being in one of her own buildings' locker, she could not gain access to it. This is directly contradicted in the letter provided by her son, which explained the Landlord had the key and did not want the Tenant to have the bicycle back. Furthermore, despite being ordered to return the bike to the Tenant at the end of the first hearing, the Landlord failed to do so before the second hearing and only returned it to the Tenant just before the third hearing. In another example of contradictions, the Landlord testified she did not perform an incoming condition inspection report with the Tenant because she was a minor and she thought it would not be valid. In direct contradiction to this, the Landlord then testified she entered into two written tenancy agreements with the Tenant. I note that under section 3 to the Act a person who is under the age of 19 may enter into a tenancy agreement and the provisions of the Act and regulations are still enforceable despite being a minor. Along with this section, the Landlord seemed to be unaware of many provisions in the Act regarding residential tenancies.

Due to the lack of credibility of the Landlord, and because I accept the Tenant's testimony that the photographs of the rental unit were taken before she had an opportunity to clean the rental unit, I find the Landlord had insufficient evidence to prove the Tenant left the rental unit in such an unclean state it could not be rented for half of a month.

I also dismiss the claim for re-keying the locks at the rental unit. There was no evidence that the Tenant was a threat to re-enter the building and no evidence to support that the Tenant had given another person a set of keys. I find the cost of re-keying the rental unit and building should be borne solely by the Landlord.

Therefore, I find the Landlord has established a total monetary claim of **\$868.60**, comprised of \$760.00 for rent and \$58.60 for cleaning, plus the \$50.00 filing fee for the Application. I allow the Landlord to retain the security deposit of **\$380.00**, and find the Tenant owes the Landlord a balance of \$488.60, ***subject to any set off in the Tenant's claims below.***

The Tenant's Claims

As the bicycle was returned to the Tenant I do not allow the Tenant to recover the cost of the bicycle; however, I will also address the loss of use of this property below.

I find the Landlord deliberately withheld the bicycle from the Tenant and I allow the Tenant's claim of **\$364.00** for having to find alternate transportation. Although the Tenant did not provide receipts for bus passes I accept her testimony that because she had no use of the bicycle she had to find alternate transportation. I find the sum of \$364.00 is reasonable compensation for this. I find this is a direct result of the Landlord withholding the Tenant's property without authority to do so.

I dismiss the claim of the Tenant for double the security deposit. The Landlord made a claim against the deposit within the required 15 days and I find there was no breach of section 38 of the Act entitling the Tenant to a doubling of the security deposit.

I also dismiss the claim of the Tenant for cleaning the rental unit at the outset of the tenancy. The Tenant had insufficient evidence to prove the condition of the rental unit at the start of the tenancy.

I find the Landlord did not address the requests of the Tenant for repairs to the faucet and toilet in the rental unit in a timely manner. The Landlord is required to supply and maintain the rental unit suitable for occupation under section 32 of the Act, and I find the Landlord took an unreasonable amount of time to make these repairs. However, I find the Tenant still had use of most of the rental unit during this time and that a full month of rent is not a reasonable amount of compensation. I allow the Tenant 20% of a month of rent in the amount of **\$152.00** for this portion of the claim.

I allow the Tenant **\$37.32** for the cost of one storage locker and dismiss the other claims of the Tenant for moving and storage, as I find the Tenant had to begin to move out early due to the actions of the Landlord. I find the moving costs are likely what the Tenant would have incurred in any event and the Tenant only had this one storage locker in her name, and therefore dismiss these other amounts.

As for loss of quiet enjoyment, I find the Landlord acted in a highhanded manner toward the Tenant and caused her unnecessary loss of quiet enjoyment of the rental unit. I acknowledge the Landlord also withheld the property of the Tenant. I also find the Landlord did not follow the provisions of the Act for showing the rental unit. The Landlord gave the Tenant "blanket notices" where she could enter the rental unit throughout May on Tuesday and Thursdays from 1 to 6:00 p.m., and on weekends from

12 to 4 pm. These “blanket notices” are contrary to the spirit of section 29 of the Act. I also find the Landlord entered the rental unit under false pretences in order to photograph the rental unit. Furthermore, I find the actions of the Landlord in withholding the Tenant’s property and leaving garbage at her front door are indicators of a pattern of vindictiveness and retaliation. In these instances and based on the general behaviour of the Landlord toward the Tenant after the end of the relationship with her son and as demonstrated throughout the hearings, I find the Tenant suffered a loss of quiet enjoyment of the rental unit for the entire month of May 2013. Therefore, I allow the Tenant the return of all of her May rent in the amount of **\$760.00**.

Therefore, I find the Tenant has established a monetary claim of **\$1,363.32**, comprised of the above amounts and the filing fee of \$50.00 for the Application.

Having made the above findings, I offset the Tenant’s award of \$1,363.32 from the Landlord’s award of \$488.60 ($\$1,363.32 - \$488.60 = \874.72) and order the Landlord to pay the Tenant the sum of **\$874.72**, forthwith.

Conclusion

The Landlord has been partially successful in her claim against the Tenant. The Tenant has been partially successful in making out her claims against the Landlord. After offsetting the awards to each party, I grant and issue the Tenant a monetary order in the amount of **\$874.72**, payable by the Landlord.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 20, 2013

Residential Tenancy Branch

