



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. At the outset of the hearing the landlord withdrew his application for a Monetary Order for money owed or compensation for damage or loss.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch in advance of this hearing. The tenants provided documentary evidence to the landlord in advance of this hearing. The landlord failed to provide documentary evidence to the tenants. However, as the landlord's evidence was the same as some the evidence provided by the tenants the landlord's evidence has been accepted. The landlord confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order unpaid rent?
- Is the landlord permitted to keep the security deposit?

Background and Evidence

The parties agree that this tenancy started on September 01, 2012 for a fixed term tenancy which was not due to expire until August 31, 2013. Rent for this unit was \$950.00 per month and was due on the 1st day of each month in advance. The tenants paid a security deposit of \$480.00 on September 01, 2012.

The landlord testifies that the tenants failed to give proper notice to end the tenancy and moved from the unit on March 06, 2013. The tenants had paid rent by cheque for March but this cheque was not cleared at the bank. The landlord testifies that the unit was re-rented for March 16, 2013 and therefore the landlord seeks an Order to recover a loss of rent from March 01, to March 15, 2013.

The landlord seeks an Order to recover the filing fee of \$50.00 and to keep the security deposit of \$480.00 to offset against the unpaid rent.

The tenants dispute the landlords claim. The tenant RS testifies that they had to move out of the unit as there was a problem with one of the landlord's employees. On March 03, 2013 this employee was very drunk and had been drinking all afternoon, slamming doors and screaming at people. That evening this employee, who lives across the hall from the tenants, was in his unit and started screaming out the tenant's name. The tenants went and knocked on his door and the employee flew out and punched the male tenant cutting and brushing his face and pushed him into the wall. RS testifies that she was so frightened that she called the RCMP. When the RCMP arrived this employee started to kick at the tenants' door and was threatening to kill the tenants. He was saying things like he would get the hells angels into kill them. The tenant RS testifies that they were very scared and feared for their lives as this employee of the landlords was so enraged and drunk. The tenant testifies that the police arrested this employee and took photographs of the damage to the tenants face and their door. The tenants have provided police incident reports in evidence.

The tenant DH testifies that he called the landlord about the landlord's employee just as the police arrived at 19.52 p.m. as shown on the police report. The landlord said he would be right over but he never arrived and when the tenant tried to call the landlord back the landlord's phone was switched off. The tenant testifies that the landlord has a responsibility to assist the tenants when they have been attacked by an employee of the landlords.

The tenant DH testifies that they had not had any previous confrontations with this employee and he had not lived in the building for long. This person did have a drink problem as he was often drunk and could be heard screaming at other tenants beneath their unit. The tenant testifies that this person had been in prison for 10 years and the tenants could not live in fear for their lives. The tenant testifies that after this person had been arrested and removed by the RCMP this persons wife stood outside the tenants' door on her phone and was asking someone to send their biggest man round. The tenant testifies that this was very intimidating and they could not live in fear any longer. The tenant testifies that they did not press charges against this person as they were fearful of repercussions against them. The tenants decided to move from the unit and had to ask the police to escort them to remove their belongings as the landlords employee had since been released by the RCMP. The tenant testifies that when they first rented this unit the landlord had told the tenants that he was trying to clean up the building by removing drug addicts from the building. The tenant testifies that this only lasted a month. The landlord also issued letters to tenants about firing his onsite manager and later told the tenant that this was because of theft of rent monies. The tenant testifies that this building was not a safe place to live.

The tenant testifies that the person who attacked him was telling other tenants that he was the new building manager. The landlord would not help to resolve these issues and protect the tenants from his employee. The tenant testifies that they wrote to the landlord on July 23, 2013 and requested the landlord return their security deposit. The tenants provided the landlord with a forwarding address in that letter.

The landlord disputes the tenants' claims. The landlord testifies that this other tenant is not the new building manager but is the cleaner for the landlord. The landlord testifies that other tenants seem to get along with this person. The landlord testifies that he is aware there was a confrontation between the cleaner and these tenants but according to the cleaner this tenant punched him and the police report says that there were conflicting stories between the tenant and this cleaner.

The landlord testifies that he did not attend the building after the tenant called the landlord as it was late at night. The landlord testifies that he cannot be held responsible for arguments between tenants and will not get into their personal business. The landlord disputes that his cleaner is drunk every day and testifies that no one else has complained about him being drunk. The landlord testifies that instead of attending at the building on the night of the incident the landlord called the RCMP the next day and was then told that the male tenant had punched the cleaner and they had conflicting stories about the incident. The landlord testifies that this matter is between the two tenants and the RCMP and the landlord cannot settle their arguments.

The tenant DH testifies that he did punch the landlord's cleaner in self defense but it was the cleaner who was arrested and the police asked the tenants to press charges but they declined.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. A breach of the covenant of quiet enjoyment has been found by the courts to be a breach of a material term of the tenancy agreement. A tenant may elect to treat the tenancy agreement as ended, however the tenant must first so notify the landlord in writing. The standard of proof is high – it is necessary to find that there has been a significant interference with the use of the premises. Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

I have considered both arguments in the matter of why the tenants elected to end the tenancy before the end of the fixed term lease. The landlord has testified that the tenants' arguments with this other tenant, who is also employed as a cleaner by the landlord, are not the business of the landlord. The RCMP have documented that there were conflicting stories about the incident that occurred between the tenants and the landlord's cleaner.

The tenants argue that due to the behavior of the landlord's employee the tenants felt so afraid that they had to vacate their rental unit and move to a safe location. It is my decision that a landlord must protect all tenants' right to quiet enjoyment of their rental unit and any common areas shared by tenants. A landlord cannot stand idly by while others engage in any conduct that would substantially prevent the tenants from quiet enjoyment of their rental unit or common areas. The landlord did not attend the incident on the night it occurred and while the landlord considers the time to have been late it did in fact occur around 8.00 p.m. The landlord has not asked the other tenant, the landlord's employee to attend the hearing to give sworn testimony about what occurred on the night of March 03, 2013 or to submit to cross examination. As the landlord was not present during the incident nor did the landlord attend the building when asked to by the tenant to witness the after effects of the incident; the landlord's testimony regarding what occurred can only be regarded as third hand information or hearsay. As it was this other person who was arrested by the RCMP and the tenants declined to press charges against that person for fear of retaliation I must find the tenants evidence more compelling as to what occurred on the night in question.

I find the tenants could reasonably expect to be frightened of further action from this employee of the landlords as threats were issued by that person and that person's wife. As the landlord did not take the stance that this was his business and he should not get into arguments between tenants then the tenants had a right to think that if any further occurrences happened between them and the landlord's employee then the landlord

would not intervene and protect the tenants right to be protected against violence and intimidation.

I therefore find the tenants were entitled to end the tenancy without notice and before the end of the fixed term lease due to the landlord's non compliance with s. 28 of the *Act*. However, as the tenants did occupy the unit until March 06, 2013 the landlord has a right to collect rent for this period of time. The landlord is therefore entitled to rent of **\$183.87**. The landlord may deduct that amount from the tenants security deposit pursuant to s. 38(4)(b) of the *Act*. The balance of **\$296.13** must be returned to the tenants pursuant to s. 38 (6)(b) of the *Act*.

As the landlord has been largely unsuccessful with this application I find the landlord is not entitled to recover the filing fee from the tenants.

Conclusion

The landlord is entitled to retain **\$183.87** from the tenants' security deposit.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$296.13**. The order must be served on the landlord and is enforceable through the Provincial Court 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: November 01, 2013

Residential Tenancy Branch

