



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover the security deposit and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (The Act)*, regulations or tenancy agreement.

A previous hearing had been held on February 12, 2014, however the tenant failed to attend that hearing and it was dismissed without leave to reapply. The tenant applied for a review of that Decision and a review hearing was granted.

The tenant and landlord attended the conference call review hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch. The landlord provided documentary evidence to the tenant by registered mail to an address the tenant provided on his application. The tenant had since moved from that address but did not provide the landlord with another forwarding address for service of evidence. The landlord's documentary evidence has been considered at this hearing. The tenant provided documentary evidence to the Residential Tenancy Branch a day before the hearing commenced. The tenant did not provide this documentary evidence to the landlord. The parties were given the opportunity to adjourn the hearing to allow the party's time to re-serve their evidence. The parties declined to adjourn the hearing. The hearing commenced as scheduled and the tenant's documentary evidence has not been considered pursuant to s. 11.5(b) of the Rules of Procedure. All admissible

evidence and testimony of the parties has been reviewed and has been considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this month to month tenancy started on March 01, 2009. Rent for this unit was \$600.00 per month due on the 1st of each month. The tenant paid a security deposit of \$200.00 on March 01, 2009. The parties agree that the tenant has not provided a forwarding address in writing to the landlord. The tenancy ended on October 31, 2011. The tenant originally filed his claim for dispute resolution two years after the tenancy ended.

The tenant testifies that he could not file his claim against the landlord any sooner as the tenants claim was under legal advisement and the tenant was suffering from some medical issues.

The tenant seeks compensation from the landlord for a loss of quiet enjoyment of the rental unit. The tenant testifies that he got custody of his son in June, 2011 and the landlord told the tenant that the landlord was going to interfere with the tenant getting custody. The landlord involved the child protection unit and contacted the tenants ex wife and her boyfriend. The tenant testifies that the landlord continued to harass the tenant and his son. The tenant testifies to the following events taking place by the landlord:

- The landlord throws full cans of beer at the tenant's door and harassed the tenant for up to 20 hours a day.
- The landlord threatened the tenant with bear spray and a can of this was later confiscated by the RCMP who were called by the tenant.
- The landlord turned up the heat to the tenant's unit on hot days which damaged the wellbeing of the tenant's pet spiders and forced the tenant and his son to leave the unit. When they returned to the unit they found their doors open. The tenants called the RCMP again and they came and questioned the landlord.
- The landlord wrote and signed an affidavit on October 25, 2011 which the tenant received from his ex-wife. In this affidavit the tenant testifies that the landlord accuses the tenant of using illegal drugs while he has custody of his son and keeping drugs at the unit; that the landlord called the RCMP about drug use and witnessed the RCMP confiscating marijuana and a marijuana pipe from the tenant; that the landlord emailed the former principal of the tenants son and the department of Children and Families because the landlord was concerned that the tenants son was not attending school, and that the tenant is affecting his son by isolating him from social contact with others and by shouting and swearing at his son; the tenant testifies that this affidavit was used when the tenant and his son's mother were going to court for custody of their son. The tenant testifies that this affidavit signed by the landlord affected the tenant's life and constitutes harassment of the tenant by the landlord.
- The landlord said he suspected the tenant was under the influence of crystal meths because the tenant was a fast talker and walked quickly.
- The landlord wanted to provide the tenant's son with sexual education and wrote an explicit letter to the tenant's 13 year old son which was sexual in nature and

which his son thought was “creepy”. The landlords made sexual advancements towards the tenant’s son after which the tenant decided to vacate the unit and gave notice to the landlord.

- The landlord poured water through the vents leading to the tenant’s unit.
- The landlord hired people to follow the tenants moving truck on the day they moved out. The moving man had to stop the truck and called the RCMP. The man following the truck was spoken to by a police officer.
- The landlord called the RCMP when the tenant went to collect his mail. The RCMP arrived and stopped the tenant to question him about who the mail belonged to.
- The landlord went on vacation and hired the tenant’s previous landlord to look after his house. This person turned everything on which caused the circuit breakers to blow. When the landlord returned he wanted access to the tenant’s unit to turn on the breakers and the RCMP were called out again.
- The landlord took the tenants tools and garbage bags and would not return them unless the tenant provided proof that they belonged to the tenant.

The tenant also testifies that the landlord called the RCMP about the tenant using illegal drugs at the unit. The RCMP arrived and only removed a marijuana pipe; there were no drugs found. The RCMP officer said to the tenant that they were going to remove his son from his care. The tenant testifies that he told the RCMP officer that they had no right to do that and the RCMP officer struck the tenant. The tenant testifies that he has filed an assault charge against that officer. The tenant testifies that this all occurred because the landlord was meddling in the tenants business and calling the RCMP on

made up charges. The tenant testifies that he has not provided any police file numbers as he would have had to pay \$50.00 for each file.

The tenant testifies that when he was in contact with Social Services they told him they had received three anonymous phone calls that said the tenant had been seen having sex with his son in a back stairwell and putting his hand over his son's mouth. These allegations also had to be investigated which caused stress to the tenant. The tenant testifies that he thought these calls had been made by the landlord. There was no proof found that the tenant was abusing his son or that he was taking drugs.

The tenant seeks a Monetary Order for \$25,000.00 against the landlord.

The landlord disputes the tenant's claims. The landlord testifies that the tenant had told the landlord that he had a pound of marijuana in the unit. The landlord submits that the tenant cannot hold the landlord responsible for getting into fights with the RCMP. The landlord disputes that he threw beer cans at the tenant's door or that he threatened the tenant with bear spray. The landlord testifies that there was a can of bear spray in the landlords' house which belonged to the landlord's son; this was given to the RCMP and was not confiscated from the landlord as testified to by the tenant.

The landlord testifies that any loss of quiet enjoyment of the rental unit is due to the tenant's dysfunctional life style and is not the fault of the landlord. The landlord agrees that on one day it started out cooler and the landlord turned the heat up to 22 degrees. Later in the day when it warmed up a little the landlord turned the heat down to 21 degrees. The landlord testifies that on the tenant's application he has stated that he was constantly harassed between September and October, 2011 and that the landlord stole his tools and killed his pets. The landlord testifies that this is a fabrication on the part of the tenant. The landlord denies stealing any tools or killing the tenant's pets. If he had, then the tenant would have charged him with theft or killing his pets.

The landlord disputes pouring water down the vents between the units. The landlord testifies that the tenant would intercept the mail and return the landlord's mail to the sender. Yet the tenant shouted at the landlord that if the landlord touches the tenant's mail the landlord would get what was coming to him. It was then that the landlord called the RCMP to intervene and two RCMP officers attended.

The landlord testifies that the tenant was aggressive and dangerous. During the summer of 2011 the tenant spent some months outside making spears out of some steel. The tenant also burnt some kind of incense that came through the vents and bothered the landlord's repository system.

The landlord disputes making sexual advances towards the tenant's son or telling the child that he would give him sexual education. The landlord testifies that there was an incident before the tenant's son came to live in the unit where the landlord had a parrot who had laid eggs. The tenant's son was visiting his father and was interested in why the eggs were infertile. The landlord went on the internet and printed off a letter to the tenant's son explaining what is necessary for procreation to occur. This letter was given to the tenant first to read who then passed it on to his son. If it was so inappropriate why did the tenant let his son read it. All the information in the letter is readily available on the internet.

The landlord agrees that he had concerns about the tenant's son not attending school. The landlord testifies that he did what any good citizen would do to protect a child by contacting the tenant's son's former school principal to inform him of this. The landlord agrees he also contacted the Ministry of Children and Families about his concerns over the tenant's son. The landlord testifies that his concerns started to form a pattern which indicated abuse. The child was dominated by his father, the child did not relate well to other people and had no friends, the child was afraid of his father and the landlord could hear soft conversations between the tenant and his son and then sounds of sexual activity when there was only the tenant and his son in the unit. The landlord testifies that he did what any concerned person would do and reported his concerns to the

authorities. The landlord agrees he did write an affidavit to document some of the events he had witnessed.

The landlord agrees that he did follow the tenants moving truck when he vacated as a lot of the tenants and landlord's belongings were mixed up and the landlord wanted to know where the tenant was going in case any of the landlord's belongings had been taken by the tenant.

The landlord refers to his documentary evidence from the tenants previous landlord who has stated, in part, that when she was looking after the landlords house that she accidentally overloaded the circuit which tripped the breaker and the tenant refused to give the landlord access to reset the breakers.

The landlord disputes taking any of the tenant's tools or the tenant's garbage bags; the landlord testifies that he has a lot of tools which the tenant was allowed to use from time to time. At the end of the tenancy they each determined which tools belonged to each other and this was the only time the parties got along.

Analysis

With regards to the tenant's claim for a loss of quiet enjoyment; in this matter the tenant has the burden of proof to show that the landlord broke the covenant of quiet enjoyment; as explained to the parties during the hearing, the burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The applicant was not able to provide any independent evidence to support his claim that the landlord has continually harassed the tenant; that the landlord made sexual advances upon the tenant's son; or any of the other allegations documented above. While the landlord agrees he did write an affidavit about the tenants and the tenant's son he has testified that any citizen would be entitled to document any behavior they considered to be harmful to a child and any citizen has a duty to report any suspicions of child abuse for the proper authorities to investigate. While the tenant has testified that all these allegations were investigated and unfounded and the tenant did gain custody of his child it does not prevent the landlord from exercising due care in his duty as a citizen to have made a report to the authorities in the first place.

Therefore, I am not able to determine that this could be deemed as harassment and while I accept that this would be upsetting to the tenant when the proper authorities have found no proof to support any child abuse, the tenant has not shown that the landlord acted with malice or intent to harm. Without further corroborating evidence to support the remainder of the tenant's claim that the landlord has continually harassed the tenant I find the tenant has not met the burden of proof that the landlord has broken the covenant of quiet enjoyment and the tenants application for compensation is dismissed.

With regard to the tenant's claim to recover the security deposit of \$200.00; I refer the parties to s. 39 of the *Act* which states:

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Consequently, as the tenant has not provided a forwarding address to the landlord and the time to do so has since passed; I find the tenant has extinguished his right to file a claim to recover the security deposit and the landlord may keep the security deposit of \$200.00 pursuant to s. 39(a) of the *Act*.

Conclusion

The tenant's application is dismissed in its entity without leave to reapply.

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: May 07, 2014

Residential Tenancy Branch

