



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 890 Devonshire Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for return of all or part of the pet damage deposit or security deposit and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. The details portion of the application specifies double recovery of the security deposit and aggravated damages.

The tenant attended the hearing assisted by an advocate and an agent for the landlord company also attended. The parties gave affirmed testimony and provided evidentiary material in advance of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided. No issues with respect to service or delivery of documents or evidence were raised.

The hearing did not conclude during the time allotted and was adjourned to later in the day for a continuation of testimony. All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the pet damage deposit or security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for aggravated damages?

Background and Evidence

The tenant testified that this month-to-month tenancy began on November 1, 2012 and ended the first week or so of November, 2013. No written tenancy agreement has been

prepared, however rent in the amount of \$600.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. In October, 2012 the landlord collected a security deposit from the tenant in the amount of \$300.00 which is still held in trust by the landlord.

The tenant further testified that no move-in or move-out condition inspection reports were completed, however the tenant provided the landlord with a letter dated January 23, 2014 which contained the tenant's forwarding address by registered mail. Copies of the letter and the Registered Mail tracking ticket have been provided. The tracking ticket is dated January 22, 2014 and the tenant testified that the date on the letter was an error and should read January 22, 2014. The evidence also shows that the mail was addressed to a person and the named landlord company. The tenant has also provided a copy of a document issued by Canada Post showing that the registered mail was accepted by a person who signed for on January 23, 2014. The tenant has not received any response, nor has the tenant been served with an application for dispute resolution by the landlord claiming against the security deposit.

The tenant claims double the amount, being \$600.00.

The tenant also testified that two previous hearings between the parties have been before the Residential Tenancy Branch. During March, 2013 an agent of the landlord gave an eviction notice to the tenant. The notice stated that all permits were in place and the landlord required the rental unit for renovation or demolishing. The tenant disputed the notice, and the landlord did not have any permits in place so the notice to end tenancy was cancelled at arbitration. A copy of the Decision has been provided by the tenant and it shows that the hearing took place on May 8, 2013 and the Decision is dated May 9, 2013. The style of cause shows another person as the landlord/respondent than the style of cause in this matter. The tenant had applied for an order cancelling a notice to end tenancy for landlord's use of property and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. The Decision states that the tenant's application for the monetary order was not related to the primary issue, being the notice to end tenancy and the Arbitrator dismissed the tenant's monetary application with leave to reapply and the notice to end tenancy was cancelled.

During the first week of July, 2013 the water and power to the rental unit were turned off by the landlord until sometime in November. The landlord was ordered by the director, Residential Tenancy Branch to turn both back on by November 15, 2013, but the tenant moved out prior to that date. A copy of that Decision has also been provided and shows that the hearing took place on October 17, 2013 and the Decision is dated the same day. The style of cause shows the limited company and another person as

landlords/respondents. It shows that the tenant had applied for an order that the landlord make emergency repairs for health or safety reasons, for an order that the landlord make repairs to the unit or site, for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for a monetary order or money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement in the amount of \$5,000.00. The Decision also states that the matter had originally been scheduled for a hearing to take place on September 24, 2013 but the landlord's agent applied for an adjournment and then no one appeared on behalf of the landlord on the reconvened date of October 17, 2013. The tenant attended, and the issues to be decided show that the tenant's application for compensation was for the lack of power and water since June, 2013. The Decision also states that the tenant testified he incurred expenses of \$35.00 per day to eat at restaurants and \$5.00 to shower at the pool, but the Decision states that the tenant provided no evidence of that. The Arbitrator ordered that the tenant was to live rent free for the months of June, 2013 and beyond until water and power to the rental unit were restored, prohibited the landlord from making a claim for back rent or current rent until restored, and the landlord was ordered to reinstate full power and water by November 15, 2013.

During that time, the tenant testified that he could not have guests and had to pack in 20 litres of water per day for cleaning, drinking and for the tenant's dog. Further, the tenant could not cook in the rental unit and had to eat all meals out. It was too cold by November to stay in the rental unit, and the tenant used up the shelter allowance given by the Ministry for meals and now the tenant is required to pay back to the Ministry the sum of \$1,500.00. The tenant claims that amount as against the landlord.

The landlord also had the postal service to the building cancelled.

The tenant did not pay any rent for July to November, 2013 as per the order of the Residential Tenancy Branch, and claims aggravated damages from the landlord in the amount of \$5,000.00.

The landlord testified that the building was a run-down motel when he purchased it in early 2012. The landlord intended to demolish it and re-build. The landlord obtained quotes for costs and told the contractor he intended to demolish it and the contractor asked if he could run it as a landlord himself for a fee. The landlord agreed and leased the building to the contractor to rent out. The contractor hired another man who rented the rental unit to the tenant. The landlord received \$22,000.00 per month and the contractor collected rent for almost a year.

The landlord also testified that the previous applications for dispute resolution filed by the tenant name the contractor as landlord, not this landlord. He stated that he is the owner of a limited company with a partner, and they own the building. The rental business was that of the contractor who leased the building from them, and the company did not collect any rent. The landlord submits that the tenant has named the company as a respondent landlord who is not a landlord.

The landlord did not cancel the postal service and stated that Canada Post stopped delivering. Further, the power was off as a result of vandalism, not intentional by the landlord.

The landlord also stated that he does not understand why the tenant remained a tenant in the rental unit without water and power and stated that the tenant did not do what was reasonable to mitigate his losses.

The landlord also disagrees that the tenant moved out in November, 2013 and testified that he had moved out by the first week of October and believes it was between September 24 and October 15, 2013 but did not provide any explanation of how he arrives at those dates.

Analysis

Firstly, with respect to naming the correct party as a respondent in this matter, the *Residential Tenancy Act* defines a landlord as any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

In this case, the landlord's agent testified that the company is owned by himself with a partner and they own the building. He stated that he leased the building to someone else who leased it for the purposes of being a landlord. However, the *Act* is clear that an owner who permits occupation of the rental unit under a tenancy agreement is also a landlord, and I so find.

With respect to the tenant's application for a monetary order for return of double the amount of the security deposit, I have reviewed the documentation provided by the tenant and I find that the tenant did send to the landlord company a letter containing the

tenant's forwarding address in writing and a request to return the security deposit to that address on January 22, 2014. The *Act* states that documents sent in that fashion are deemed to be served 5 days later. The *Act* also states that a landlord must return a security deposit in full or apply for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do so, the landlord must be ordered to repay the tenant double the amount. In this case, the parties disagree as to the exact date that the tenancy ended, but I find it was between mid-October and November 15, 2013 and the landlord received the tenant's forwarding address in writing on January 27, 2014. The landlord has not filed an application for dispute resolution and has not returned any portion of the security deposit, and I find that the tenant has established a monetary claim for double the amount, being \$600.00.

With respect to the tenant's application for a monetary order for aggravated damages, in order to be successful I must be satisfied that the tenant has established that the tenant suffered aggravation, that the tenant suffered aggravation as a result of the landlord's failure to comply with the *Act* or the tenancy agreement, the level of aggravation caused to the tenant as a result of the landlord's failure, and what the tenant did to mitigate any loss or damage suffered as a result of the aggravation.

The *Residential Tenancy Act* requires a landlord to maintain a rental unit in a state of repair and decoration that makes it suitable for occupation by a tenant, and complies with the health, safety and housing standards required by law. It also states that a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit. The legislation contemplates that the rental unit is the home of the tenant, the tenant pays rent in exchange for exclusive occupancy, and the parties are bound by the contract until it is legally ended. The *Act* also states that a party who breaches the terms of the contract or the *Act* must compensate the other for damage or loss that results and that the director may determine the amount of and order that party to pay compensation to the other party.

In this case, I find there is no question that the landlord has failed to comply with the *Act*. Whether or not the power and water were deliberately turned off in an attempt to encourage the tenant to move out after the landlord was unsuccessful with an eviction notice, the landlord had an obligation to ensure it was all back on and ensure the tenant had a home to reside in. I further find that the tenant suffered aggravated damages as he described. To suggest that the tenant didn't mitigate by simply moving out is not a sufficient defence. The landlord had an obligation until the tenancy was legally ended.

The tenant testified that during the period of July, 2013 to the end of the tenancy he could not have guests, could not shower in the rental unit, had to pack in 20 litres of

water per day for cleaning, drinking and for the tenant's dog, he could not cook in the rental unit and had to eat all meals out. He further stated that it was too cold by November to stay in the rental unit, and the tenant used up the shelter allowance given by the Ministry for meals and now the tenant is required to pay back to the Ministry the sum of \$1,500.00.

The Decision of the Arbitrator dated October 17, 2013 provided the tenant with reimbursement of all rent, or no rent payable for the loss of services, which I find are specific damages, not aggravated damages, in that they are specific to the fact that a landlord cannot charge rent if the landlord does not provide necessary services.

I am not entirely satisfied that the landlord is responsible for the tenant's recovery of \$1,500.00 owed to the Ministry, but I am satisfied that the tenant has established aggravated damages in the amount of \$3,600.00, being the equivalent of 6 month's rent for pain, suffering and aggravation caused by the landlord's failure to carry out the terms of the tenancy agreement and comply with the *Residential Tenancy Act*.

In summary, I find that the tenant has established a monetary claim as against the landlord for double recovery of the security deposit, being \$600.00, as well as aggravated damages in the amount of \$3,600.00, for a total of \$4,200.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,200.00.

This order is final and binding and may be enforced.

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: July 4, 2014

Residential Tenancy Branch

