



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, MNSD

Introduction

This hearing was convened in response to an application filed by the tenant seeking money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and the return of the security deposit.

The tenant attended the hearing but the respondent did not. I accept the tenant's testimony that they served the respondent with Notice of today's hearing by registered mail. The hearing proceeded on the merits of the tenant's claims. Prior to concluding the hearing the tenant acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be determined

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

It must be noted that a previous Decision of the Director accepted jurisdiction of this matter under the Act insofar as that a tenancy agreement existed between the parties from September 01 to December 31, 2013.

The tenancy started September 01, 2013 and since ended by an Order of Possession. The tenant testified they and the respondent were in a consensual personal relationship, "on and off for 5 (five) years and exclusively" shortly after they moved in; and, that 4 months into the tenancy agreement they determined to co-habit in the unit as of January 01, 2014 and "planning their future together". The tenant claims that during the course of the relationship prior to January 01, 2014 the respondent was repeatedly abusive toward the tenant in their personal relationship. The tenant submitted that they "lost count" of the number of times they, "put (their) home back together due to the (respondent's) outbursts". The parties were embroiled in repeated

conflict over circumstances in their union in what the tenant has described as an abusive and strained relationship. The tenant describes the respondent as distrustful of the tenant's faithfulness and fidelity within their relationship, with resulting outrage and upheaval of the rental unit, and accompanying intrusive affronts to their person and their belongings, in part, as follows:

- November 2013 - *During my attempt to leave, he pulled me out of the elevator, dragged me across the 2nd floor and threatened my friend waiting below.*
- December 2013 – *he flipped my bed mattresses and began tossing my belongings out the 3rd floor hallway.*
- *On 4 different occasions – he has taken my keys from me off my desk. I have purchased 4 sets of locks due to the fact he will not return the keys.*
- *I have had to replace 2 active cellular phones which he deliberately threw out.*
- *He would wake me up in the middle of the night or have me strip down naked during the day in search of evidence I was dishonest and disloyal.*

The tenant further describes that together with the respondent they renovated the rental unit to their satisfaction; therefore they seek compensation for their time and efforts to renovate the unit in the amount of \$1250.00 and an additional \$250.00 for related hired services.

The tenant seeks compensation for “phones destroyed” in the amount of \$250.00

The tenant seeks compensation for the purchase of 4 locks and related costs to obtain and install them, in the amount of \$500.00.

The tenant seeks compensation for personal property damaged, lost or “already replaced”, in the amount of \$250.00. In addition, unspecified compensation or return of belongings removed without the tenant's permission or knowledge.

The tenant seeks the return of their security deposit; however, they testified that they have not provided the respondent their forwarding address - as required by the Act - primarily because they do not want the respondent to have it.

The tenant seeks compensation for: “ *nuisance, mental suffering, humiliation, repeated destruction of their home, consumption of time, loss of peace, loss of employment time, financial strain, ongoing fear, and chaos which (respondent) has inflicted on my life during the time of my tenancy*”, in the amount of \$5000.00.

Analysis

In this matter the burden of proving claims of loss and damage rests on the claimant (tenant) who must establish, on a balance of probabilities that they have suffered a loss due to the landlord's neglect, or failure to comply with the Act. And, if so established, did the claimant (tenant) take reasonable steps to mitigate or minimize the loss?

Section 7 of the Act outlines the foregoing as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the tenant must satisfy each component of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred *solely because of the actions or neglect of the Respondent in violation of the Act or agreement*
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

The tenant bears the burden of establishing their claim by proving the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the losses that were incurred.

I accept the evidence that the tenant and respondent were in a consensual, albeit troubled personal relationship during the period of the tenancy.

I find the tenant has not provided evidence to support that they are owed compensation from the respondent for work performed renovating the unit - in the respondent's violation of their obligations under the Act.

On balance of probabilities I am not convinced that the respondent's actions and conduct were within the context of the *tenancy relationship*; but rather, were within the context of the ongoing troubled *personal relationship*.

On balance of probabilities, I am not convinced the tenant had to replace the deadbolt 4 times during the tenancy due to the respondent purportedly taking the corresponding keys from inside the unit after each replacement.

As a result of all the above, I find the tenant has not shown that the respondent was negligent, or that the respondent's negligence and non-compliance with the Act resulted in the tenant's loss. On the balance of probabilities I find the tenant has not met the test for damage and loss and as a result **I dismiss** the portion of the tenant's application respecting damage and loss in its entirety, *without leave to reapply*.

I find the tenant has not provided the respondent with a forwarding address, and the Act effectively prescribes that until such time they do so, the respondent may retain the security deposit. As a result, **I dismiss** this portion of the tenant's application, *with leave to reapply*. It must be noted that the tenant has until December 31, 2014 – one year from the end of the tenancy - to notify the respondent of a forwarding address, or risk their right to claim it.

Conclusion

The tenant's application **is dismissed**, with leave to reapply *limited solely to an application respecting the security deposit*.

This Decision is final and binding on both parties.

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 30, 2014

Residential Tenancy Branch

