



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR, MNR, MNDC
 MNDC, MNSD, FF

Introduction

This review hearing was scheduled in response to two Applications for Dispute Resolution (the "Application") made by the Landlord and one made by the Tenant.

The Landlord and Tenant had appeared for a number of previous hearings during which monetary issues claimed by both parties were not heard and were dismissed with leave to re-apply.

In addition, the Landlord had applied for an Order of Possession and a Monetary Order for unpaid rent through the Direct Request process. On September 3, 2014 the Arbitrator who had conducted the Direct Request Application granted the Landlord an Order of Possession and a Monetary Order for unpaid rent in the amount of \$830.00. The Tenant applied for a review of the Direct Request decision and was successful in the review application. As a result, the decision and orders dated September 3, 2014 were suspended until the outcome of this review hearing. Both parties' monetary claims were also scheduled to be heard in this review hearing.

Preliminary Issues

The Landlord and Tenant both appeared for the review hearing and provided affirmed testimony and documentary evidence prior to the review hearing.

The parties confirmed receipt of the Application(s) and the respective documentary evidence; however, the Landlord denied receipt of the Tenant's photographic evidence relating to the Landlord's claim for damages to the rental suite in the amount of \$400.00. The Tenant explained that he had served these to the Landlord by e-mail but the Landlord denied receipt of these. The Tenant also explained that he had submitted further evidence in rebuttal to the Landlord's claim for damages which was received by

the Residential Tenancy Branch late because of the short time he had to respond to the Landlord's Application.

The Landlord's monetary Application was made on October 23, 2014 and served to the Tenant by registered mail. I accept the Tenant's submission that this did not leave the Tenant sufficient time for him to gather his evidence and serve this in time to the Landlord for this hearing. In addition, I find that the Landlord's claim for damages to the rental unit is not sufficiently related to the remainder of the parties' claims which are inextricably linked. Therefore, I found that it was more appropriate to sever and dismiss this portion of the Landlord's Application for damages to the rental unit with leave to re-apply at which point the Tenant will have sufficient time to provide rebuttal evidence.

I also confirmed that there was no requirement for an Order of Possession by the Landlord as the Tenant had moved out at the end of September, 2014.

Both parties were given a full opportunity to be heard, to present their affirmed testimony, to make submissions and to cross-examine one another. While I have turned my mind to the documentary evidence submitted prior to the previous hearings, not all details of the respective submissions and arguments are referred to in my decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent or utilities for August and September, 2014?
- Is the Tenant entitled to the return of double the amount of his security deposit?
- Are the parties entitled to monetary compensation for loss under the Act?
- Is the decision and orders made by the Arbitrator on September 3, 2014 to be confirmed, varied or set aside, pursuant to Section 82(3) of the Act?

Background and Evidence

Both parties agreed that this tenancy started on May 1, 2014 for a fixed term of one year. The Landlord explained that the Tenant was responsible to pay rent under the written tenancy agreement in the amount of \$750.00 and 15% of the utilities. The parties were further questioned about the amount payable for utilities and both parties agreed that this amounted to \$80.00 per month. The Tenant paid the Landlord a security deposit of \$375.00 at the start of the tenancy which the Landlord still retains.

The Landlord testified that the Tenant had not paid any rent or utilities for the months of August and September, 2014. In August, 2014 the Tenant had been served with a

notice to end tenancy for unpaid rent for this period. As a result, the Landlord now claims rent and utilities from the Tenant in the amount of \$1,660.00 (($\750.00×2) + ($\$80.00 \times 2$)).

The Tenant confirmed that he had not paid rent for August and September, 2014 and submitted the reason for this was because the city and the Landlord had informed him that the rental suite was an illegal suite and that the Landlord was being forced to shut down the tenancy. The Tenant submitted that because the Landlord had provided him with an illegal suite he was not obligated under the Act to pay rent as the tenancy agreement was void. In addition, the Tenant stated that the Landlord served him with a notice to end tenancy for cause because the Landlord had to close the unit down when the Landlord should have given him a two month notice to end tenancy for the use of the property which required that he be compensated for one month's rent in any case.

Following on from this, the Tenant feels that as the Landlord had rented him an illegal suite he claims from the Landlord all of the rent and utility payments made from the start of the tenancy in the amount of \$2,480.00 and \$23.00 relating to truck rental to remove his belongings as a result of being forced out of the tenancy.

The Tenant testified that because of the Landlord's breach of the Act, he should be compensated for damages in the amount of \$1,900.00. The Tenant explained that this amount also reflected alleged harassment from the Landlord regarding him having a guest in his unit which the Landlord claimed was an occupant. The Tenant provided written correspondence between the parties that indicated that the Tenant and Landlord disagreed about their rights and obligations under the Act and the tenancy agreement. The Tenant explained that the Landlord had made a number of Applications against him which were not proven and had gone to the extent of threatening to inform the Tenant's employer of the situation and barging into his rental suite without providing written notice.

The Landlord explained that the Tenant's allegations were unfounded. The Landlord testified that the Tenant refused him access to the suite after he had given written notice to the Tenant and that he engaged the Residential Tenancy Branch regularly to find out what his rights and obligations were under the Act.

The Landlord explained that he was claiming \$3,750.00 from the Tenant because he had served the Tenant with a legal notice for unpaid rent that required the tenancy to end in August, 2014. The Landlord testified that he had been informed by the city that if he wanted to continue to rent out the suite he would have to rent all of the residential property as one suite. Therefore, the Landlord explained that he engaged into an agreement with the upstairs renters for them to rent out the Tenant's rental unit because his tenancy was due to end because the Tenant had not paid rent. The Landlord

admitted that he had engaged into this tenancy with the upstairs renters when he knew that the Tenant was still occupying the rental unit and knew that the Tenant had disputed the notices to end his tenancy for cause and unpaid rent. The Landlord explained that because the Tenant did not leave the tenancy until the end of September, 2014, the upstairs renters were now displaced and he had to pay their bed and breakfast accommodation for 30 nights. The Landlord provided a receipt for a 30 night stay.

The Tenant explained that he was also seeking double the amount of his security deposit as the Landlord had not returned it to him after he had provided the Landlord with a forwarding address in writing on October 24, 2014 in the form of a written letter.

The Landlord acknowledged receipt of the Tenant's forwarding address during a conference call hearing that took place on October 15, 2014 and had also sent the mail to the Tenant at this address. When the Landlord was asked why he had not made an Application to keep the Tenant's security deposit, the Landlord explained that he was making a claim for it under his claim for damages to the rental suite for \$400.00 and that he was told by the Residential Tenancy Branch that this is what he needed to.

I noted that the Tenant had sent the Landlord his forwarding address which also detailed the relevant portions of the Act outlining the Landlord's requirements to make an Application for the Tenant's security deposit and the consequences of not doing so.

Analysis

Section 26(1) of the Act requires a Tenant to pay rent under a tenancy agreement whether or not the Landlord complies with the Act unless the Tenant has authority under the Act to not pay rent.

In this case, I find that the Tenant was required to pay a total amount of rent, inclusive of utilities, in the amount of \$830.00 per month. The Tenant took his authority not to pay rent from his assumption that because the rental suite is illegal, he did not have to pay rent for August and September, 2014 and seeks reimbursement for all rent paid from the start of the tenancy due to a claim that the tenancy was void.

The legality of suite is governed by municipal legislation and this legislation has no jurisdiction over the Act. The Act does not give authority for a Tenant to not pay rent if a rental suite is deemed illegal under municipal legislation. The Act allows remedies under Section 47(1) (k) of the Act if the Landlord is provided with a legal order that the rental suite must be vacated. However, there is no requirement by the Landlord to provide one month's compensation to the Tenant as this is only payable under a Section 49 notice to end tenancy for the Landlord's use of the property, which was not served to the Tenant.

The issuing of such a legal order to the Landlord to have the rental suite vacated also does not invalidate a tenancy to the extent that a Tenant would not have to pay rent for the duration of time they were in occupancy of the unit and using utilities.

In order to end a tenancy a Landlord must issue the Tenant with a proper legal notice that gives the Tenant the ability to dispute the Notice, which would then require the Landlord to prove the Notice. In this case, I find that there would have been no requirement for the Tenant to have left the tenancy until the Notice which was disputed by the Tenant. Therefore, I find that there is not sufficient evidence that the Tenant was forced to leave the rental unit even though the Landlord had made requests for him to do so. Accordingly, I dismiss the Tenant's Application for the return of all rent and utilities paid under the tenancy agreement and his truck rental.

As the Tenant had no authority to withhold rent under the Act, I find that the Tenant is liable for August and September, 2014 rent and utilities in the amount of **\$1,660.00** claimed by the Landlord.

In examining the Landlord's monetary claim for the accommodation costs, I dismiss this portion of the claim because Section 7(2) of the Act requires a party to mitigate loss when making a claim against another party. I find that committing to a tenancy knowing that a Tenant is still occupying a suite and was in the process of disputing the notices to end tenancy which were still required to be proved, was not in compliance with Section 7(2) of the Act. I find that under the circumstances of this tenancy, the Landlord would not have been in a position of confidence to offer vacant possession of the rental suite when he claims to have engaged into a tenancy with the upstairs renters. Furthermore, I find that the Landlord has failed to provide sufficient evidence to show that the Landlord even had a tenancy with the upstairs renters and that the invoice for the bed and breakfast related to these upstairs renters.

Section 38(1) of the Act requires a Landlord to make an Application within 15 days of receiving the Tenant's forwarding address in writing if they intend to claim against it and not return it. Section 38(6) of the Act provides that if a Landlord fails to make an Application within the 15 day time limit then the Landlord must pay the Tenant double the amount of the security deposit.

The Landlord acknowledged receipt of the Tenant's forwarding address on October 15, 2014 which is the same address that the Landlord sent mail to the Tenant and the one that was provided in writing by the Tenant. The Landlord claims that he was advised by the Residential Tenancy Branch that his claim for damage to the rental unit covered his request to keep these monies and that he acted in accordance with their instructions.

However, I find that the Landlord failed to make an Application to keep the Tenant's security deposit and nowhere in the Landlord's Applications does he disclose that he seeks to keep the deposit. The Tenant had explained to the Landlord in writing, the provisions of the Act above and the Landlord acknowledged receipt of this letter but failed to act accordingly. In addition this information is also referenced in the tenancy agreement signed and agreed to by the parties.

I find that the Landlord seeks to attribute the responsibility to advise him to make an Application for the Tenant's security deposit with the Residential Tenancy Branch but I find that the branch does not provide a legal advice service and is only able to provide information being asked of them rather than an exhaustive list of all a Landlord's obligations under the Act. Furthermore, a Landlord is required to learn, consider and know their rights and obligations under the Act, as this is the business they are in. As a result, pursuant to Section 38(6) of the Act, I award the Tenant double the amount of his security deposit in the amount of **\$750.00** (\$375.00 x 2).

In relation to the Tenant's claim for punitive damages for harassment, I find that the Tenant allegations of harassment are unsubstantiated. The evidence provided by both parties, including the Tenant's written evidence, indicates that the relationship between the parties was highly strained and the parties were at a considerable dispute about what each party's rights and obligations were under the Act. I find that **both** parties engaged in these correspondences with as much vigour as the other and while I do not make any findings on the parties' interpretation and understanding of the Act in relation to the written exchanges, I find that this is not sufficient evidence to show that the Tenant was harassed.

The Tenant made a claim for \$50.00 for registered mail costs and \$75.00 for previous Applications made by the Tenant. The Act does not allow me to award any party costs associated with preparation for dispute resolution as this must be borne by each party making an Application. In addition, I am not able to consider the Tenant's request to recover from the Landlord filing fees associated with **previous** hearings and Applications; however, I am able to consider the Tenant's claim to recover the filing for the cost of making this Application.

As the Tenant has been successful in obtaining double the amount back in relation to this security deposit and would have had to make an Application to recover this amount, I find that the Tenant is also entitled to the recovery of the filing fee paid for this Application in the amount of **\$50.00**. Therefore, the total amount awarded to the Tenant is **\$800.00**. The Act allows me to offset claims awarded to each party. The Landlord is awarded a total amount of \$1,660.00 and the Tenant is awarded a total amount of

\$800.00. Therefore the Tenant is liable to pay the Landlord the balance of the claim in the amount of **\$860.00**.

In relation to the decision and orders made by the Arbitrator on September 3, 2014, I find that it is appropriate to set aside the decision and orders, as the Order of Possession is now a moot issue, and because I am issuing the Landlord with a new Monetary Order based on the above findings.

Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$860.00**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims).

The Landlord's Application for damages to the rental unit is dismissed with leave to re-apply.

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 05, 2014

Residential Tenancy Branch

