



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the tenant. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a tenancy agreement that provided that the tenancy would start on August 1, 2013. The tenancy agreement provided that the tenant(s) would pay rent of \$540 per month payable in advance on the first day of each month.

The tenant testified he was locked out of the suite on October 4, 2014. An arbitrator in a previous arbitration that was held on April 10, 2014 (the landlord did not appear) held

the landlord acted illegally in locking out the tenant and awarded the tenant \$300 for loss of personal belongings (including food) and \$540 for aggravated damages for a total of \$840. The tenant was also successful in an arbitration dated October 29, 2014 where the arbitrator awarded the tenant \$600 which was double the security deposit.

I determined that the tenant did not live in the rental unit after October 4, 2014. The tenant testified he lived in homeless shelters for two months and did not acquire another accommodation until December 1, 2013. The tenant's belongings including a 32 inch LCD television, clothes, telephone etc. remained in the rental unit until some time in December. The tenant testified he asked the landlord to return his belongings once he obtained his new rental unit on December 1, 2014 but the landlord refused. The tenant eventually obtained his belongings on December 24, 2014.

Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

The landlord failed to produce evidence in the form of receipts, quotations, photographs etc. At the hearing the landlord testified he had some documents and photographs and stated he wanted to deliver the documents to the Residential Tenancy Branch tomorrow. The landlord failed to deliver this evidence to the respondent within 14 days of the date of the hearing. To permit the landlord to introduce this evidence at such a late date would result in a denial of the principle of natural justice to the respondent as

the tenant would be denied an opportunity to effectively respond. This is not a situation where an adjournment is appropriate as the landlord had ample give the documents to the other side.

The tenant testified that the landlord's claim is a fiction and not supported by any evidence. The first time the landlord has made a claim for damage to the rental property and appliances was after the tenant was successful in obtaining a monetary order against the landlord for double the security deposit. The tenant denies living in the rental unit after October 4, 2014. The tenant denies that the furnace, stove, house or laundry were broken up until the day he left the rental unit. He has no knowledge of the condition of these appliances after that date.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I dismissed the landlord's claim of \$1448 for non payment of rent for the period October 1 to December 24, 2014. I determined the tenant is liable to pay the rent for the period October 1, 2014 to October 4, 2014 as he had use of the rental property during that time. **The landlord is entitled to \$69.68 for the 4 days.** I dismissed the landlord's claim for non-payment of rent for the period from October 5, 2014 to December 24, 2014 as the landlord prevented the tenant from using the rental property when he illegally locked out the tenant. The arbitrator in the previous arbitration held on April 10, 2014 which is binding on the parties stated

"However, Section 31 of the Act does not allow a Landlord to change the locks or prevent access to the rental suite. In this case, I accept the Tenant's evidence that the Landlord changed the locks to the Tenant's rental suite which was against the Act and therefore the Tenant is entitled to compensation for this violation."

...

“Based on all of the foregoing, I find that the Tenant is entitled to aggravated damages. This is based on the fact that the Landlord would have had knowledge it was wrong to end the tenancy in this manner and by changing the locks to the rental suite, the Landlord acted deliberately. I also find that the Landlord should have reasonably foreseen this would cause hardship to the Tenant and that this violation of the Act was sufficient in depth and duration to cause a significant impact on the Tenant’s life. “

However, I find that the amount being sought by the Tenant is excessive and I find that compensation for one month of rent in the amount of \$540.00 is more appropriate, taking in to consideration that the Tenant did not take the relevant steps to mitigate his loss.

- b. The tenant left his belongings in the rental unit and did not make sufficient efforts to retrieve the belongings until after he found another rental unit on December 1, 2014. **I determined the landlord is entitled to a reasonable sum of \$75 per month for the months on October and November for the cost of storing the belongings for a total of \$150.** I dismissed the landlord’s claim for the cost of storing the belongings after December 1, 2014 as the landlord failed to make reasonable efforts to return the belongings to the tenant after the tenant had asked for their return.
- c. I dismissed the landlord’s claim of \$156 for Shaw Cable. The Application for Dispute Resolution does not identify which months the claim is for. However, the tenant did not have the use of the cable after October 4, 2014 and the landlord does not have a right to recover this sum. Further, the landlord failed to present evidence in the form of bills to support this claim.
- d. I dismissed the landlord’s claim of \$1000 for the cost of repair a broken furnace. The landlord failed to prove the furnace was broken at the time the tenant left. Further there is insufficient evidence that if it was broken, the damage was caused by the tenant. Finally the landlord failed to present evidence in the form of bills to support this claim.

- e. I dismissed the landlord's claim of \$500 for the cost of repair a stove. The landlord failed to prove the stove was broken or if broken, it was caused by the tenant. Further the landlord failed to present evidence in the form of bills, quotations etc. to support this claim.
- f. I dismissed the landlord's claim of \$2000 for the cost to fix the house. The landlord failed to prove the tenant caused damage to the rental unit. Further the landlord failed to present evidence in the form of bills, quotations etc. to support this claim.
- g. I dismissed the landlord's claim of \$1000 for the cost of repair a broken laundry machine. The landlord failed to prove the laundry machine was broken or that the tenant's caused the alleged damage. Further the landlord failed to present evidence in the form of bills, quotations etc. to support this claim.

In summary I determined the landlord has established a monetary claim against the tenant in the sum of \$219.68 plus the \$50 filing fee for a total of \$269.68.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced 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: December 18, 2014

Residential Tenancy Branch

