



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes MNR, MNDC, RPP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for 6 days rent, cleaning costs and repairs.

The hearing was also to hear a cross application by the tenant seeking compensation for expenses incurred for repairs, damaged property, the cost of a new post office box, towing costs, extra moving costs, medical expenses, aggravated damages including a refund of rent for loss of quiet enjoyment and the cost of filing the application. The tenant is also seeking the return of property.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matter

The tenant had submitted documents, photos and a disc into evidence. Although the landlord acknowledged receipt of this evidence, the landlord stated that they were unable to view the contents of the computer disc, as the electronic media file would not open on their computer.

Given the above, I decline to consider the contents of the disc. However, I will consider verbal testimony and other evidentiary material served on the parties and submitted.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for loss of rent?

Is the tenant entitled to monetary compensation in damages?

Is the tenant entitled to compensation for damages and aggravated damages?

Is the tenant entitled to the return of property held by the landlord?

Background and Evidence

Landlord's Claims

The landlord testified that the tenancy began in June, 2013 with rent of \$975.00. submitted into evidence were copies of communications, copies of receipts and invoices, copies of cheques, bank records, photos and written statements.

The landlord testified that a previous dispute resolution hearing was held prior to this hearing and resulted in the parties mutually agreeing to end their tenancy.

A copy of the previous decision, dated June 13, 2014, confirmed that the parties agreed the tenant would vacate the unit before July 31, 2014 and would pay rent only for the period of time they occupied the unit.

The landlord testified that the tenant left on July 6, 2014. However, the tenant left without paying any rent for the month of July. The landlord is seeking rent for the 6-day period.

The tenant testified they attempted to pay the \$195.00 rent for July, 2014, but were rebuffed by the landlord. The tenant stated they only owe rent for 5 days..

The landlord testified that the tenant also left the unit in need of cleaning and they were forced to spend 16 hours doing the clean-up. The landlord further alleged that the tenant left damage to the floor, cabinets and walls. The landlord seeks \$500.00 for all of the cleaning and repairs. The landlord acknowledged that no move-out condition inspection report was done, but stated that this was due to the hostile reception by the tenant. The landlord made reference to their photos of the suite submitted into evidence to support their claim.

The tenant disputed the landlord's testimony and stated that they left the unit in a clean condition. The tenant testified that the damage to the unit was not caused by them. The tenant pointed out that their photos prove that the unit was turned over in good condition. According to the tenant, the alleged damage to the wall was already discussed at the previous hearing and they should bear no financial responsibility for this repair.

Tenant's Claims

The "*Details of Dispute*" section of the tenant's application indicates that the tenant is seeking damages for monetary expenses and aggravated damages for loss of quiet enjoyment due to humiliation and threats. The tenant is accusing the landlord of disconnecting their power, hot water, internet and cable and also withholding the tenant's mail. In addition, the tenant states that they were denied

access to common areas and garbage disposal services. The tenant further contends that the landlord purposely disrupted their move out efforts in July 2014 by vandalizing their truck. The tenant testified that back in June 2013 the landlord had forced them to wait 2 hours when they were trying to move into the unit and they therefore incurred extra costs that are being claimed.

The tenant's Monetary Order Worksheet lists the following claims:

DAMAGES		
Fridge Shelf Replaced (June/13)	33.60	
Chair Damaged replacement	368.00	
Track lights Rod damaged	70.13	
Extra Expense (for mailbox)	105.00	
Tow Truck cost	60.00	
Chiropractor treatments	260.00	
Move-Out Cost – for truck	51.95	
4 Car Tires	224.00	
Cost of Arbitration	50.00	
AGGRAVATED DAMAGES		
June 15, 2013 – 2-hr move-in delay as old tenants vacated (Rent rebate & mover cost)	32.50 40.00	
Rent May 2014	975.00	
Rent June 2014	975.00	
Rent July 1 – 6, 2014	195.00	

The tenant testified that, when they first moved in they found that a shelf in the refrigerator was broken. The tenant testified that, after repeatedly asking the landlord to replace it, they finally paid for a new shelf, but the landlord refused to

reimburse them for this cost. The tenant submitted a copy of an undated receipt but stated the shelf was purchased near the end of June 2013.

The landlord testified that the refrigerator was brand new when the tenancy began and the tenants had broken the shelf themselves. The landlord stated that they were never asked by the tenant to repair this item in June 2013.

The tenant testified that the landlord damaged their property including a chair and a track light. The tenant seeks compensation. The tenant submitted copies of receipts for purchases of the claimed items made in April and May 2011.

The landlord testified that they never damaged any of the items being claimed by the tenant. The landlord pointed out that the tenant already made unsuccessful claims for damaged property in the previous hearing held on June 13, 2014.

The tenant testified that they were forced to obtain an alternate post office box because the landlord was not giving them their mail. According to the tenant, the landlord discarded mail about the property. The tenant submitted photos of scattered mail and a receipt dated May 30, 2014, for a post office box for 1 year.

The landlord denied tampering with the tenant's mail. The landlord pointed out that the tenant obviously needed to get a new post office box because they were relocating in July 2014. The landlord stated that there is no valid reason why the landlord should be held responsible to fund the tenant's new post office box for the next year.

The tenant is claiming \$60.00 for the cost of a tow truck and \$224.00 for new tires. The tenant testified that their moving truck was vandalized and they believe that the tires were punctured by the landlord. The tenant stated that the police were contacted.

The landlord testified that they were eager for the tenant to vacate the unit and therefore would have no motive to undermine the move-out process. The landlord pointed out that police attended but nobody was charged.

The tenant is seeking reimbursement for the cost of moving out on July 6, 2014. The tenant feels entitled to compensation on the basis that they only agreed to vacate because they were being harassed by the landlord and forced to move.

The landlord argued that the tenants vacated pursuant to a mutual agreement to end the tenancy, as noted in the previous hearing decision of June 13, 2014. The landlord stated that this fact should preclude the tenant from claiming their moving costs as damages.

The tenant testified they incurred costs of \$260.00 for chiropractic services due to a fall that happened on the property during their tenancy. The tenant holds the landlord accountable for the injuries they suffered and the cost of treatment.

The landlord disagrees with this claim. The landlord denied knowing anything about the tenant's alleged fall, nor the chiropractic treatments.

In regard to the claim for aggravated damages, the tenant stated that on the day they moved in, in June 2013, they were forced to wait 2 hours for the current occupants to vacate and incurred extra costs for movers and were deprived of the use of the unit for this period.

The tenant stated that they also feel entitled to aggravated damages because, throughout their tenancy, they endured continuous harassment. The tenant testified that they were subjected to humiliation, physical abuse, a sexual assault, landlord intrusions, deprivation of heat, hydro, cable, internet and hot water.

The tenant therefore feels entitled to a rent abatement for the months of May, June and July 2014.

The landlord disputed the tenant's claim for aggravated damages and pointed out that the tenant had never paid the pro-rated rent of \$195.00 rent for July 2014 in the first place.

Analysis: Landlord's Monetary Claim for Rent

I find that both parties have acknowledged that the tenant remained in the unit past the end of June 2014 and did not pay any rent from July 1 to July 6, 2014. I accept that the parties reached a mutual agreement at the previous hearing that the tenancy would end and that the tenant could leave on short notice, provided they vacated on or before July 31, 2014. I find that there was also an agreement by both parties that the tenant must pay for their occupancy up to the date they vacated. I find that the tenant left on July 6, 2014.

Therefore, I find that the landlord is entitled to be paid rent in the amount of \$195.00 for the period from June 1, 2014 to June 6, 2014 inclusive.

Analysis: Landlord's Damage Claim

An applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act

grants an arbitrator the authority to determine the amount and to order payment under these circumstances.

I find it important to note that in a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened 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, and
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage.

In regard to the landlord's claim for cleaning and repairs, I find that the landlord has failed to submit sufficient proof to satisfy the test for damages. Because no move-in and move-out condition inspection reports were submitted, the landlord was not able to establish that the tenant is responsible for their costs. Moreover, the landlord did not submit proof of the expenditure for cleaning or repairs. For this reason, I find that the landlord's claim for compensation for cleaning and repairs must be dismissed.

Analysis: Tenant's Claim in Damages

In regard to the tenant's monetary claims for the purchase of the refrigerator shelf, damage to the chair, damage to the light fixture, purchase of a postal box, towing expenses, replacement tire costs and chiropractic charges, I find that all of these confirmed expenditures fail to satisfy element 2 of the test for damages. I find that, although the tenant verified that the costs were genuinely incurred, they were not able to provide sufficient evidence to prove that the landlord violated the Act or agreement and to prove that the landlord was directly responsible for the tenant's claimed costs and losses.

In regard to the tenant's claim for moving costs at the end of the tenancy, I find that the tenant and landlord had both mutually agreed to end the tenancy and cannot hold the landlord responsible for wrongfully terminating the tenancy or violating the Act to give rise to a right to claim damages.

Analysis: Tenant's Claim for Aggravated Damages

In regard to the tenant's claim for aggravated damages, I find that the portion of this claim relating to the delay at the start of the tenancy for reimbursement of extra cost of the movers during the 2-hour wait, cannot be considered as a claim for *aggravated* damages. I find that this would be a claim for monetary or pecuniary damages based on the loss that the tenant claims they incurred.

However, I find that the tenant delayed in making this claim for a year after the incident occurred. I find that there is no indication that the tenant brought up this matter with the landlord at the time. I find that the claim does not satisfy element 4 of the test for damages due to the tenant's failure to mitigate the loss by pursuing the matter closer to the time it occurred.

I find that the rest of the tenant's claim for aggravated or non-pecuniary damages for compensation equal to the \$975.00 rent paid for April, \$975.00 paid for May and the \$195.00 owed for June 2014, are apparently based on the tenant's claim of harassment and loss of quiet enjoyment during their tenancy.

I find that an arbitrator may grant aggravated damages in compensation for physical inconvenience and discomfort, pain, grief, humiliation, loss of self-confidence, mental distress and other intangible losses, which are considered to be "non-pecuniary" in nature. Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful, reckless or indifferent behaviour.

To justify an award of aggravated damages, I find that the claimant must prove that the conditions are sufficiently significant in depth, or duration, or both, representing a profound influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

In the case before me, I find that the burden of proof is on the tenant to prove their claim. I find that, although the tenant has made serious allegations of wilful and reckless conduct inflicted upon them by the landlord, the landlord disputes all of these allegations. I find that the tenant's testimony is not adequately supported by evidentiary proof to justify aggravated damages. Accordingly, I find that the tenant's claim for aggravated damages must be dismissed.

Based on the evidence before me, I find that the landlord has established a total monetary claim of \$245.00 comprised of \$195.00 for unpaid rent for 6 days in July 2014 and the \$50.00 cost of the application.

I hereby grant the landlord a monetary order in the amount of \$245.00. This order must be served on the tenant and may be enforced through Small Claims Court if necessary.

The remainder of the landlord's claims are hereby dismissed without leave.

Based on the evidence before me, the tenant's application is hereby dismissed in its entirety without leave to reapply.

Conclusion

The landlord is partially successful in the application, and granted a monetary order.

The tenant's cross application is dismissed in its entirety without leave,

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 02, 2014

Residential Tenancy Branch

