



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, RPP, O

Introduction

This hearing was convened to address a claim by the tenant for a monetary order, an order for the return of double his security deposit and an order compelling the landlord to return his personal property. Both parties participated in the conference call hearing.

Issues to be Decided

Should the landlord be ordered to return the tenant's personal property?

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled to an order for the return of double his security deposit?

Background and Evidence

The landlord claimed that the tenancy began April 7, 2014 while the tenant claimed that it began May 1, 2014. The parties agreed that the tenant paid a \$250.00 security deposit at the outset of the tenancy and that throughout the tenancy, the tenant paid \$500.00 per month in rent and that he was obligated to pay a portion of the utilities as well. They further agreed that the rental unit was one room in an apartment in which 2 other bedrooms were rented to separate tenants.

The tenant claimed that he was illegally evicted on September 30, 2014 following an incident in which the police were called. The tenant testified that while he was in the bathroom of the rental unit, the landlord brought another person into the unit, whom I shall refer to as "T" and left him alone in the living room. The tenant went into the living room and discovered T watching TV, at which time he politely asked T to leave the unit. According to the tenant, when he asked T why he was there, T said "I'm here to straighten things out" and attacked the tenant.

The parties agreed that the landlord did not re-enter the rental unit until T had the tenant pinned to the ground, at which time she summoned the police. The tenant testified that

both he and T were taken away by the police and said that he did not bring his keys or entry fob with him and therefore was unable to return to the rental unit after the date of this incident (the "Altercation"). The tenant insisted that the Altercation took place on September 30. The tenant seeks \$5,000 from the landlord to compensate him for injuries suffered during the altercation. The tenant claimed that the landlord brought T to the rental unit specifically to attack him.

The landlord testified that T is a tradesperson who she invited to the apartment to assess damages to the unit and provide an estimate for repairs. She testified that she was in the process of moving into one of the bedrooms and T assisted her in moving her belongings and that she left the apartment only briefly to interact with other tenants on another floor. She denied having instructed T to attack the tenant. The landlord provided copies of police incident reports which indicate dates on which they were called to the apartment. There are 3 reports recording incidents which took place on October 12, October 13 and October 17. The landlord claimed that the Altercation occurred on October 17 and testified that she saw that the tenant had left his keys in the rental unit. She did not return the keys to the tenant and on the advice of the police, did not allow him entry into the unit after that date.

The tenant seeks \$15,000 in aggravated damages for the illegal eviction and testified that he has been living on the streets since the landlord refused to allow him access to the apartment.

The tenant seeks an order compelling the landlord to return his personal property, all of which was left in the rental unit on the last day of the tenancy. He acknowledged that he received a text message from the landlord shortly after the Altercation in which she asked him to come back to the apartment to retrieve his belongings. The tenant said that in order to retrieve his belongings, he would have to borrow or rent a truck and although at the hearing the landlord stated that she was willing to return his belongings, the tenant could not set a date to collect his things because he was not sure when he would have transportation.

The tenant seeks an order for \$100 for utilities paid in April, September, October and November. He claimed that he did not move into the rental unit until April but that the landlord made him pay a bill for April and May. He claimed that the Ministry of Employment and Income Assistance (the "Ministry") pays his utility bills on his behalf. He seeks a refund of monies paid for September, October and November because he is certain he did not live at the unit in October and November. The landlord testified that the Ministry did not pay any money for utilities for the tenant and although she requested payment directly from him several times, he did not provide payment.

The tenant seeks to recover the \$500 in rent paid by the Ministry on his behalf for the months of October and November as he claims he was illegally evicted from the unit on September 30. The landlord insisted that the tenant's last day in the unit was October 17 and acknowledged that she cashed the Ministry's cheque for October, but claimed that she returned their cheque for November.

The tenant seeks the return of double his security deposit. He testified that he vacated the rental unit on September 30 and filed his application for dispute resolution on October 31. He stated that he provided the landlord with his forwarding address in writing on November 3.

Analysis

First addressing the issue of the security deposit, the landlord is not obligated to deal with the security deposit until 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find that the tenant filed his application prior to the time when the landlord's obligation to deal with deposit was triggered and therefore find that the application for the return of the deposit is premature. At the hearing, I advised the landlord that I find that she received the forwarding address on the date of the hearing, December 9, 2014. The landlord has 15 days, until December 24, to either return the deposit in full or make a claim against the deposit. The tenant's claim for the return of the deposit is dismissed with leave to reapply.

I find it more likely than not that the tenant's last day in the rental unit was October 17, 2014. I have arrived at this conclusion because the police reports show that they dealt with the tenant in the unit on that date. I find that the landlord illegally evicted the tenant. Although the landlord claimed that she believed that the tenant had caused significant damage to the unit and that the police had told her not to allow the tenant back into the unit, the Act provides that the landlord must not end the tenancy except by serving a notice to end tenancy or filing an application for an end to tenancy. I find that the landlord did not comply with her obligations under the Act. I find that the landlord is only entitled to rent for the period from October 1-17, which amounts to \$274.19. I find that the tenant is entitled to a refund of his rent for the period from October 18- 31 and I award him \$225.81. I find that the tenant has provided insufficient evidence to prove that the landlord cashed the Ministry's cheque for the month of November and I dismiss that claim.

In order to prove his claim for the repayment of utility payments, the tenant must prove that he made those payments. He claimed that these payments were made directly by the Ministry to the landlord, but provided no evidence from the Ministry to corroborate

this claim. I find that the tenant has failed to prove that the Ministry paid utilities on his behalf and I dismiss that claim.

Aggravated damages are designed to compensate a person who has been wronged by a deliberate or negligent act by the wrongdoer. The incident must represent a significant influence on the victim's life. I find that the tenant has made out his claim for aggravated damages as I find that the landlord deliberately locked him out of the rental unit and failed to follow her obligation to end the tenancy in accordance with the law. I find that the tenant was rendered homeless, at least temporarily, as a result and that this had a significant impact on his life. I find that an award the equivalent of one month's rent will adequately compensate the tenant and I award him \$500.00.

In order to prove his claim for damages suffered as a result of the Altercation, the tenant must prove that the landlord had some hand in the Altercation. The tenant provided no evidence other than his own speculation to show that the landlord caused the Altercation to occur. I find it extremely unlikely that the landlord, if she wanted T to attack the tenant, would telephone the police. I am not satisfied that the landlord had any part in the Altercation and I therefore dismiss the claim for damages.

The landlord indicated her willingness to return the tenant's belongings to him and the tenant acknowledged that she offered to return these items within weeks of the end of the tenancy. The landlord is not obligated to deliver those items to the tenant, nor is she obligated to store those items indefinitely. I order the tenant to make arrangements to retrieve his belongings from the landlord by no later than January 15, 2015. The tenant must make arrangements with the landlord to collect the belongings and the landlord should make reasonable efforts to accommodate the tenant as he has some difficulty arranging for transportation. The landlord may not insist that the tenant bring a police escort for that event, although she is welcome to invite the police or witnesses other than T to attend should she feel unsafe. I order the landlord to store the tenant's belongings until January 15, 2015. After that date, the landlord may dispose of the items.

Conclusion

The tenant has been awarded \$725.81 which represents rent for October 18- 31 and \$500.00 for aggravated damages. I grant the tenant a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. The landlord is ordered to store the tenant's belongings until January 15, 2015 and the tenant is directed to make arrangements with the landlord to retrieve his belongings before that date. The balance of the tenant's

claim is dismissed without leave to reapply save the claim for the security deposit, which is dismissed with leave to reapply.

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 09, 2014

Residential Tenancy Branch

