



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The parties both attended and gave affirmed testimony, and the landlord provided evidentiary material prior to the commencement of the hearing to the Residential Tenancy Branch and to the tenant. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the landlord submitted that this dispute does not fall within the jurisdiction of the Residential Tenancy Branch because the *Act* does not apply.

Issue(s) to be Decided

- Does this dispute fall within the jurisdiction of the *Residential Tenancy Act*?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of rent paid and aggravated damages?

Background and Evidence

The tenant testified that this month-to-month tenancy began on January 1, 2014 and ended on July 2, 2014. Rent in the amount of \$550.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of

the tenancy the landlord collected a security deposit from the tenant in the amount of \$275.00 which was returned to the tenant on June 30, 2014.

The tenant further testified that the landlord and 2 other people went into the tenant's room and removed all of his clothing, books and other belongings and delivered them to the tenant in the yard. The police were called who told the tenant that he would have to take it up with the Residential Tenancy Branch. The tenant left his belongings with another tenant and stayed with other friends or relatives until obtaining another rental unit on or about July 6, 2014. The tenant had paid rent to the landlord in the amount of \$550.00 for July, thus paying rent for 2 homes.

The tenant made an application for dispute resolution seeking an Order of Possession of the rental unit and a hearing was convened on July 17, 2014. The Decision was rendered the same day in favour of the tenant, and the tenant obtained an Order of Possession of the rental unit. However, the tenant was not able to move back into the rental unit because the City had closed the house down and everyone had to move out at the end of August. The inspection completed by the City was done around the same time as the hearing. Another tenant had told the tenant that an engineer was there and all tenants were given eviction notices.

The tenant went to the rental complex asking for his rent money back for July, but the landlord refused to pay. The tenant then received legal advice wherein he was advised to apply for aggravated damages.

The tenant further testified that the Decision of the Residential Tenancy Branch shows that under Section 4 of the *Act*, based on the evidence and testimony, the Arbitrator found that the *Act* applies. The tenant never used the kitchen upstairs and never saw the landlord or any other tenants who resided on other floors within the complex use the kitchen or bathroom in the lower level of the complex where the tenant resided. The landlord has provided the frontal page and the final page of the 4-page Decision.

The tenant claims \$2,500.00 for recovery of July's rent and aggravated damages for the landlord's actions in removing the tenant from the rental complex without giving a notice in accordance with the *Residential Tenancy Act*.

The landlord testified that rent for July was paid by the tenant after the landlord had returned the security deposit. The landlord didn't return the rent money because the tenant had applied for an Order of Possession.

The landlord further testified that the tenant agreed to move out. On May 14, 2014 the landlord gave the tenant verbal notice to move out, and the parties verbally agreed that

the tenant would move out on June 30, 2014, but the tenant didn't move out. The landlord had a professional mover remove the tenant's belongings. When the police arrived, they told the landlord that the tenant had to be permitted to leave his belongings in the rental complex so the landlord agreed. The landlord's son was prepared to put the tenant's belongings in another room.

The landlord further testified that the rental unit is a room only within a rooming house and that the landlord also resides there. All tenants use the laundry room in the lower level and all tenants and the landlord are free to use either the kitchen in the lower level or the upper level except for one unit that has its own kitchen and bathroom. The tenant's unit was a room only with shared kitchen and bathroom and therefore, the *Residential Tenancy Act* does not apply.

The landlord also testified that the tenant received the Order of Possession on July 17, 2014 and was free to move back into the room but didn't do so. Therefore, the landlord does not feel the tenant is entitled to any monetary compensation.

The City advised that the rooming house had to be closed because the building and lot are zoned for single family dwellings. The remaining tenants didn't get notice to vacate until the end of July.

Analysis

Firstly, with respect to jurisdiction, I have read the Decision of the Residential Tenancy Branch dated July 17, 2014. It is clear that the Arbitrator during that hearing made a finding that the *Act* does apply. The page provided by the landlord of that Decision states: "As I have found that a tenancy exists the only way in which the landlord can end a tenancy is in accordance with Section 44 of the *Act*. As the landlord failed to end the tenancy by issuing any kind of notice to end tenancy and the tenant did not agree, in writing, to end the tenancy I find the tenancy continues and the tenant is entitled to an order of possession." Also, the landlord testified that there is a small kitchen in the lower level and the tenant testified that at no time did he ever see the landlord or another tenant from another level of the complex use the kitchen or bathroom in the lower level. Therefore, I find that the *Act* does apply.

The landlord's position is that the tenant could have moved back into the rental unit after obtaining the Order of Possession but chose not to and therefore is not entitled to recovery of any rent. I disagree; the tenant was moved out by the landlord on July 2, 2014 and the hearing took place on July 17, 2014. The tenant received an Order of Possession sometime after that. The tenant testified that he couldn't move back in because of the order of the City, and the landlord disputes that, saying that the other

tenants didn't get notice to vacate until the end of July. Regardless of when or how the tenant learned he couldn't move back in, I find that the tenant is entitled to recovery of the rent. Also, if the tenant had moved back into the rental unit in July, the tenant would be entitled to another month's notice to move out along with all other tenants, and that notice wouldn't take effect until August 31, 2014.

In order to be successful in a claim for aggravated damages the tenant must satisfy me what he did to mitigate the damages suffered. The tenant obtained another place to live on July 6, 2014 and stayed with family and friends from July 2 to 6. Therefore, I am satisfied that the tenant did what was reasonable to mitigate the circumstances, and the tenant was aggrieved for a short period. I find that the tenant has established a monetary claim in an amount equivalent of one month's rent for moving expenses.

In summary, I find that the tenant has established a monetary claim for return of rent paid for January, 2015 in the amount of \$550.00 and moving expenses in the amount of \$550.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,100.00.

This order is final and binding and may be enforced.

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: January 29, 2015

Residential Tenancy Branch

