Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, PSF, O

Introduction

This hearing dealt with an application by the tenants for a monetary order, an order compelling the landlord to return their security deposit and an order compelling the landlord to provide services or facilities. The tenants provided evidence that the landlord was served with the application for dispute resolution and notice of hearing sent via registered mail on December 17, 2014. The documents were returned to the tenants as unclaimed. The landlord cannot avoid service by refusing to collect registered mail. I found that the tenants served the landlord in accordance with the provisions of the Act and the hearing proceeded in his absence.

At the hearing, the tenants confirmed that they no longer lived in the rental unit. I therefore consider the claim for an order compelling the landlord to provide services or facilities to be withdrawn as it is not required.

Issue to be Decided

Are the tenants entitled to a monetary order as requested?

Background and Evidence

The tenants' undisputed testimony is as follows. The rental unit is a trailer owned by the landlord. The tenancy began in May 2014 at which time the tenants paid a $300.00 security deposit. Rent was set at $740.00 per month and the tenants were told that they could work off up to half of their rent each month. The tenants understood that they were operating under a "rent-to-own" strategy and that if they rented the unit for 12 months, in the 13th month they and the landlord would execute paperwork in which they would acquire the rental unit with half of the rent paid up to that point forming the downpayment. The parties did not have any written agreements in place.

The tenants performed labour in October 2015 which was equivalent to half of their rent and gave the landlord a cheque for the other half of the rent. The tenants testified that the cheque was negotiated. On October 9, the landlord attended at the rental unit and advised the tenants that the trailer was being repossessed and that they needed to vacate the unit by 6:00 p.m. The landlord also gave the tenants a letter advising that they had to leave by 6:00 p.m. and making a

number of allegations against them, including that they had not paid rent for October. The landlord also turned off the hydro and water.

The tenants vacated the unit pursuant to the landlord's demand and testified that they had to rent a storage locker at a cost of $98.00 per month and are currently living in the basement of one of the tenants' parents. They testified that they are not currently paying rent, but have to pay for their own food as well as utilities.

The tenants seek the following compensation:

Return of security deposit	$ 300.00
Refund of October's rent	$ 740.00
First and last month's rent for new accommodation	$1,400.00
Security deposit for new accommodation	$ 750.00
Gas for moving	$ 100.00
Storage fees	$ 250.00
Suffering and inconvenience	$1,000.00
Total:	**$4,540.00**

Analysis

I accept the undisputed testimony of the tenants. The tenants introduced evidence which leads me to consider the question of whether this tenancy falls under the jurisdiction of the *Residential Tenancy Act*. Typically, the Act does not apply to rent-to-own agreements. Those types of agreements give the tenant an ownership interest and the Act does not apply to tenants who are part owners because they would then fall under the definition of "landlord" under the Act and cannot be both landlords and tenants as they would be seeking remedies from themselves. In this case, the parties did not enter into any written agreement which would give the tenants an interest which could be registered against the title to the trailer and the tenants did not live in the unit for a full year, which was to be the point at which the rent-to-own scheme was triggered. For this reason, I find that if this arrangement existed, it had not yet been triggered as the tenants had not yet resided in the rental unit for 12 months. I therefore find that the rent-to-own arrangement does not oust my jurisdiction.

The tenants submitted copies of text messages sent between them and the landlord in which the landlord stated that the relationship was governed by "business hotel motel that's why we charge GST". I understand this to mean that the landlord believes the governing legislation is the *Hotel Keepers Act*. Although the landlord apparently also owns a resort which is on the same property as the rental unit, I find that this tenancy falls under the *Residential Tenancy Act* rather than the *Hotel Keepers Act*. The *Hotel Keepers Act* is designed to govern vacation or short term accommodation, not long term tenancies. The landlord collected a security deposit from the tenants, which is not something typically done by a hotel, the tenancy lasted for more than 5 months, which is not typical of vacation accommodation, and the landlord planned to sell

them the individual rental unit, which hotel keepers do not typically do with their guests. I find I have jurisdiction to hear this claim.

The *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and
4. Proof that the applicant took reasonable steps to minimize the loss.

Section 44 of the Act provides that a tenancy ends when tenants give notice to end their tenancy, when the landlord gives a notice in an approved form pursuant to the Act or when the Director of the Residential Tenancy Branch orders that the tenancy has ended. The Director did not issue such an order, the tenants did not give notice to end their tenancy and the landlord did not issue an order in an approved form. I find that the landlord ended the tenancy illegally and without proper notice. I find that the landlord failed to comply with the requirements of the Act.

The tenants have proven that they paid the landlord one half of October's rent and I accept their undisputed testimony that they performed labour equivalent to the remaining one half month's rent. I find that the landlord was not entitled to receive rent for a period of time in which he did not permit the tenants to occupy the rental unit and that this loss is compensable. The tenants occupied the unit from October 1 – 9 and I find they are entitled to receive a refund for the period from October 10 – 31. Rent for that month is paid at a rate of $23.87 per day and I find they are entitled to receive a refund for 22 days for a total of $525.14 which I award to them.

The landlord has not made a claim against the security deposit and is not entitled to arbitrarily retain the deposit. I find the tenants are entitled to a refund of the deposit and I award them $300.00.

I dismiss the tenants' claim for first and last month's rent and the security deposit at their new accommodation for several reasons. First, I cannot envision a situation in which a former landlord would be responsible for paying rent for his former tenants at their new accommodation. Second, the tenants did not pay a security deposit at their new accommodation as they are living in a parent's home and they are only paying utilities but not rent. They testified that the current cost of utilities and their food equals what they were paying the landlord, but I note that the landlord was not feeding them during their tenancy and the amount of utilities they pay is far less than what they were paying for rent. Although their living situation is less than ideal, they are now in a much better financial position than they were when they were living at the rental unit.

I dismiss the claim for storage costs as well because even with the cost of monthly storage, the tenants are still not paying $740.00 per month in rent so they have suffered no loss in that regard.

The tenants claimed the cost of gas for moving but did not provide a receipt for gas and testified that their move took 5-6 trips within town in the vehicle of their parents. I am not satisfied that 6 round trips between the rental unit and their current address would have amounted to $100.00 worth of gas and without a receipt showing that they paid for gas, I am not satisfied that they are actually out of pocket that amount of money.

The tenants also claimed $1,000.00 for "suffering and inconvenience." I find this to be the equivalent of a claim for aggravated damages. Residential Tenancy Policy Guideline #16 provides as follows:

> Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.
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> - The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
> - The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.
> - They must also be sufficiently significant in depth, or duration, or both, that they represent a significant 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 this case, the landlord deliberately evicted the tenants without notice and forced them to move from the rental unit with no legal reason to do so. The tenants had no power or water during the day they were given to move and had to work quickly to find accommodation for themselves and their belongings. They testified that the sudden move caused them significant distress and significantly interfered with their lives, as they have not been able to secure alternative housing.

Applying the test set out in Policy Guideline #16, I find that the landlord's behaviour was high handed, that he completely disregarded his obligations under the Act and he had no concern that his illegal actions would significantly impact the tenants. I find that the tenants are entitled to aggravated damages. An award of this nature is necessarily arbitrary as there is no mathematical formula by which one can determine an amount, so I must therefore award the tenants what I believe to be fair. I find that an award equivalent one month's rent will adequately reflect the impact of the landlord's actions and I award the tenants $740.00.

In summary, the tenants have been awarded the following:

October's rent repayment	$ 525.14
Security deposit	$ 300.00
Aggravated damages	$ 740.00
Total:	**$1,565.14**

I grant the tenants a monetary order under section 67 for $1,565.14. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants are awarded $1,565.14.

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: March 05, 2015

Residential Tenancy Branch