



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;

The two landlords and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The hearing lasted approximately 104 minutes.

The landlords confirmed that they received the tenant's application for dispute resolution hearing notice ("Application") on December 31, 2014, by way of registered mail. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's Application.

The landlords confirmed that they received the tenant's one-page written evidence package regarding the tenant's amended monetary claim summary. The landlords indicated that although they received this evidence only one week prior to this hearing, they had reviewed the evidence and were prepared to proceed with the hearing on this basis. The tenant's written evidence is late as per Rule 3.14 of the Residential Tenancy Branch ("RTB") Rules of Procedure, as it is due 14 days before the hearing. However, I accept the tenant's one page summary at this hearing, as I find that the landlords were duly served and they had a chance to review this information prior to the hearing.

The tenant testified that he did not serve the landlords with four pages of written evidence, including receipts and a bill of lading. Rule 3.1 of the RTB Rules of Procedure requires the tenant to serve his written evidence upon the landlord, prior to the hearing. Accordingly, I advised both parties that I was unable to consider the tenant's four page written evidence package at this hearing or in my decision.

Issues to be Decided

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

Both parties agreed that this month to month tenancy began on July 1, 2013. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant and both parties agreed that the landlord returned the deposit to the tenant in full on November 29, 2014. A written tenancy agreement governs this tenancy, but one was not provided by either party for this hearing.

The landlords issued a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated September 22, 2014, with an effective move-out date of November 30, 2014 ("2 Month Notice"). The reason stated was that the landlords required the rental unit for their own personal use. The tenant testified that he received the 2 Month Notice on September 23, 2014 and he did not dispute it. The tenant stated that he vacated the rental unit on November 20, 2014, while the landlords maintained that the tenant left on November 30, 2014. In his Application, the tenant originally claimed for \$1,000.00 in compensation under section 51(1) of the *Act*, which allows one month rent free, pursuant to a 2 Month Notice. During the hearing, the tenant withdrew his claim for this amount because he says that the landlords returned the tenant's November 2014 rent cheque of \$1,000.00 on February 2, 2015.

The tenant claims for \$333.33 in compensation for the period from November 20 to 30, 2014, pursuant to section 50(2) of the *Act*. The tenant testified that he provided notice to the landlords, via email, that he was vacating the rental unit earlier than the effective date in the 2 Month Notice. The tenant states that the landlords benefitted from this early departure because they were able to use the rental unit earlier.

The tenant testified that a move-in condition inspection and report were completed, but that he did not receive a copy of this report from the landlords. The tenant stated that he stayed locally in the area for two to three days after vacating the rental unit on November 20, 2014. The tenant testified that he proposed move-out inspection dates and times to the landlords but that the landlords refused his requests. The landlords stated that the tenant proposed unreasonable times to meet for inspection, around 4:00 and 5:00 a.m. The tenant denies this contention, indicating that he proposed meeting at

any time around the male landlord's schedule. Initially, the tenant testified that a move-out inspection occurred on November 29, 2014 but then he revised his testimony to indicate that it occurred on November 30, 2014. The landlords maintained that the original date set for the move-out inspection was November 30, but that the tenant insisted on an earlier date so it actually occurred on November 29, 2014. The tenant indicated that he incurred costs for having to travel a great distance in order to attend the move-out inspection, as the tenant had moved to his new rental unit by the time the landlord agreed to meet. The tenant stated that the landlords' unreasonableness to meet on an earlier date for the inspection, while the tenant was still in town, caused him to incur these costs.

The tenant stated that at the beginning of this tenancy, there was a verbal understanding between the parties that the tenant might purchase the rental unit. The tenant stated that he signed the tenancy agreement for a month to month tenancy. The tenant indicated that there was no firm commitment for him to purchase the rental unit but that he asked the landlords about the purchase price many times. The tenant stated that he made numerous repairs and improvements to the rental unit because he considered purchasing it in the future. The landlords testified that there was no verbal or written agreement for the tenant to perform any repairs or improvements in the rental unit. The landlords stated that the tenant's repairs did not add any elegance to the rental unit and they did not improve the property.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the landlords caused the damage or loss claimed by the tenant.

Section 50(2) Compensation for Early Vacancy

The tenant testified that he provided written notice in accordance with section 50(1)(a) of the *Act*, to vacate the rental unit on an earlier date than the effective date on the 2

Month Notice, which was November 30, 2014. The tenant stated that he provided notice to vacate effective on November 20, 2014. However, the tenant testified that he provided this notice to the landlords by way of email. Email is not considered "written notice" for the purposes of service in accordance with section 88 of the *Act*.

I find that the tenant's notice to vacate the rental unit was not proper notice under the *Act*, as it was not served in accordance with section 88. I find that the tenant is not entitled to compensation pursuant to section 50(2) of the *Act*. Accordingly, the tenant's claim for compensation of \$333.33 for vacating the rental unit 10 days early, is dismissed.

Hearing, Inspection, Repair and Improvement Costs

The tenant claims for expenses hearing-related costs for having to file and amend his Application, as well as serve evidence for this hearing. The tenant stated that he made four trips to the local RTB service offices and one trip to the post office. The tenant claimed lost time in the amount of \$33.00 per hour for a period of five hours, totalling \$165.00, for round trip travel. The tenant stated that this is the rate charged for his current job as a language tutor. The tenant testified that he did not miss any time off work or wages from having to file and serve hearing-related documents. The tenant also claimed \$70.80 total for fuel costs for these trips. The tenant claimed \$11.34 for registered mail for having to serve his Application to the landlords. The tenant also claimed \$33.00 for one hour of hearing time, based on his work rate. During the hearing, the tenant increased this amount to \$52.80 based on $1.6 \times \$33.00$ per hour because the hearing lasted longer than one hour. I dismiss the tenant's application in the amount of \$299.94 for the above hearing-related costs, including lost time, mailing and fuel. The only hearing-related costs recoverable under section 72 of the *Act*, are for filing fees for applications.

The tenant claims costs for having to travel over 200 kilometres from his new home to the rental unit to conduct the move-out inspection. Initially, the tenant claimed \$170.00 total for these costs but at the hearing, the tenant amended his Application to seek \$157.00. The tenant claims lost time in the amount of \$33.00 per hour for a period of 4 hours, totalling \$132.00, for round trip travel. The tenant stated that this rate was again based on his job. The tenant testified that he did not miss any time off work or wages from having to attend this move-out inspection. The tenant also claimed \$25.00 in fuel costs; the tenant did not provide a receipt for this expense. I dismiss the tenant's application in the amount of \$157.00 for travelling to attend the move-out inspection. I do so as I find that the tenant did not miss time off work or provide any fuel receipts to substantiate his claims.

The tenant initially sought \$358.94 in repair and improvement expenses incurred during the course of his tenancy. During the hearing, the tenant amended his claim to seek only \$256.34 for these expenses, while abandoning the remaining amount of \$102.60.

The tenant testified that he spent \$35.50 for a new smoke alarm detector for the rental unit. The tenant stated that he was required to make this purchase for his own safety, as a maintenance contractor informed him that the previous smoke detector was not functioning. During the hearing, the landlords testified that they agreed to reimburse the tenant for this expense. Accordingly, I find that the tenant is entitled to \$35.50 for the smoke alarm detector purchase.

The tenant painted areas of the rental unit because of small holes he made in the walls. The tenant stated that he left the remaining paint behind for the landlord's benefit. As per section 32(3) of the Act, the tenant is required to repair damage to the rental unit that is caused by his own actions or neglect. Accordingly, I find that the tenant is not entitled to reimbursement for his \$45.46 painting expense.

I dismiss the tenant's following claims for compensation:

- \$50.00 for purchasing lumber to build linen shelves - during the hearing, the landlords stated that the tenant can attend at the rental unit and remove the shelves as well as repair any damage that results from this removal;
- \$52.81 to purchase a new dining room fixture light;
- \$8.51 to repair the bathroom fan and install insulation;
- \$41.81 and \$19.52 for installing insulation around the front door; and
- \$2.73 for purchasing bolts to secure a storage locker in a common area of the rental building - during the hearing, the landlords agreed to return the bolts to the tenant.

I dismiss the above claims because there was no firm commitment for the tenant to purchase the property, as the tenant signed a tenancy agreement to rent the property only. Therefore, any repairs or improvements made by the tenant were of his own accord and not based on a confirmed agreement to purchase. The landlords confirmed that they did not request or authorize the tenant to perform any repairs or improvements, nor were they advised of any required repairs.

Conclusion

I order the landlords to allow the tenant to attend at the rental unit at a mutually agreeable time, in order to allow the tenant to retrieve his linen shelves, remaining paint

and bolts. I order that the tenant make any arrangements to obtain these items, at his own cost, within 30 days of the date of this decision. In the event that the tenant has not made these arrangements within this time period, I order the landlords to either retain or dispose of these items at their own discretion.

I issue a monetary order in the tenant's favour in the amount of \$35.50 against the landlords, to account for the smoke alarm detector. The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's monetary application is dismissed without 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: March 26, 2015

Residential Tenancy Branch

