



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF O

Introduction

This hearing dealt with monetary claims by the tenants and the landlord. Both tenants, an advocate for the tenants, the landlord and the landlord's counsel all participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's application. The landlord submitted approximately 40 pages of late evidence, which I did not admit or consider. Both parties were given full opportunity to give affirmed testimony and present their admissible evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue – Previous Decision

A dispute resolution hearing convened on September 17, 2014, pursuant to the tenants' application to cancel a notice to end tenancy for unpaid rent, as well as for monetary compensation and a reduction in rent. The tenants claimed compensation of \$13,600 to cover anticipated packing and moving costs, as well as the estimated cost to restore their smoke-damaged personal property, on the basis that the landlord smoked in the lower portion of the house and the smoke had a negative impact on the tenants. The arbitrator found that the notice to end tenancy was valid, and granted the landlord an order of possession effective September 30, 2014. The arbitrator dismissed the tenants' monetary claim for lack of sufficient evidence.

At the outset of my hearing with the parties, I informed them that I could not revisit issues that had already been determined in a previous decision. Therefore, I would not consider the portions of the tenants' application regarding the validity of the order of possession or any claim for monetary compensation based on effects of the landlord's smoking.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenants rented the upper portion of a house, and the landlord resided in the lower portion of the house. The monthly rent was \$1400 and at the outset of the tenancy the tenants paid the landlord a security deposit of \$700.

As the result of a hearing and decision issued on September 17, 2014 the landlord was granted an order of possession effective September 30, 2014. On September 24, 2014 the tenants applied for a review of the decision and order of possession. In the review consideration decision dated September 29, 2014 the arbitrator dismissed the tenants' application for review and confirmed the decision and order in question.

On October 17, 2014 the female tenant attended at the landlord's lawyer's office and delivered a bank draft in the amount of \$1400. A notation on the draft indicates that the payment was for October rent. The landlord cashed the bank draft on December 3, 2014.

On October 17, 2014 the landlord obtained a writ of possession pursuant to the order of possession. On October 28, 2014 a bailiff attended the rental property and removed the tenants and their belongings from the unit.

Tenants' Evidence

The tenants stated that they made an agreement with the landlord that they could remain in the rental unit until the end of October 2014. In support of their testimony the tenants provided copies of text messages between the landlord and the tenants, where the tenants asked the landlord on October 2, 2014 if they should do a money transfer to the landlord's email, and the landlord replied, "No give to my lawyer." In a text to the tenants on October 3, 2014 the landlord wrote, in part, "You have promised to be out at oct 31 at one pm." He also informed the tenants that he would be smoking in his part of the property. The tenants stated that the landlord shut off the laundry machines while the tenants were doing laundry, and he told the tenants that he wished they would leave.

The tenants stated that on October 28, 2104 the bailiff without warning removed the tenants and put their belongings outside in the rain. As a result of this forced eviction, the tenants have claimed compensation as follows:

- 1) \$800 for rental of emergency suite for October 28 – 31, 2014;
- 2) \$700 estimated cost for spoiled foods;
- 3) \$2000 estimated costs for moving in and out of storage and pod; and
- 4) \$2618.84 estimated prices to replace damaged mattresses, bed table, TV stand and TV.

The tenants also claimed costs for dispute resolution fees, courthouse fees and medication. The tenants stated that as a result of the landlord smoking, the male tenant was diagnosed with COPD. The tenants' total monetary claim is \$15,000, including: the items noted; double recovery of the security deposit; rent for October 2014; and compensation for their health and their totally disrupted lives.

Landlord's Evidence

The landlord denied having an agreement with the tenants that they could stay until October 31, 2014. The landlord submitted that he maintained to the tenants that he was entitled to possession of the unit. The landlord stated that the tenants refused to vacate the unit on September 30, 2014, and they then approached the landlord and asked if they could stay for October. The landlord stated that the tenants did not keep the peace, so he decided to take steps to evict them. In a letter dated September 30, 2014, the landlord's lawyer advised the tenants that they must immediately comply with the order of possession and move out, or the landlord would commence proceedings to have the bailiff remove the tenants and their belongings.

The landlord submitted that the tenants' action of applying for a review of the September 17, 2014 decision and order is not consistent with their statement that they had an agreement with the landlord to stay for October. The landlord submitted that the money order does not amount to acceptance or create a contract between the landlord and the tenants. The landlord submitted that he was entitled to cash the money order because under section 57 of the Act, a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

The landlord has applied for compensation totalling \$5000, comprised of \$2072.02 for executing the writ of possession, and "general damages to be assessed."

Analysis

Upon consideration of the evidence and on a balance of probabilities, I find it more likely than not that the landlord and the tenants did have an agreement allowing the tenants to occupy the rental unit for the month of October 2014. I am persuaded by the landlord's text message of October 2, 2014, in which the landlord instructed the tenants to pay the rent for October to the landlord's lawyer and which the tenants did; the landlord's text message of October 3, 2014, in which he notes that the tenants may stay until October 31, 2104; and the landlord's testimony that the tenants approached him to ask if they could stay for October, after which the tenants did not keep the peace, so the landlord decided to take steps to evict them. The landlord was estopped from evicting the tenants until October 31, 2014.

As the tenants were wrongfully evicted, I find that they are entitled to **\$800** for the cost of the emergency suite. The tenants occupied the rental unit for 27 days in October 2014, and they are not entitled to recovery of rent for those days; however, they are entitled to recovery of **\$180.65**, representing the rent for October 28 through 31, 2014. I accept the tenants' evidence that some of their furniture was damaged when the bailiff put it out in the rain, and I grant the tenants **\$2618.84** for their replacement costs for these items.

I am not satisfied that the tenants provided sufficient evidence to establish that \$700 worth of their food spoiled, but I accept that some food would have spoiled, and therefore grant the tenants a nominal amount of **\$200** for spoiled food.

I am not satisfied that the tenants provided sufficient evidence to support their claim of \$2000 for moving and storage. The tenants would have incurred moving costs to vacate on October 31, 2014 in any case. However, I accept that they would have incurred some extra costs for storing their possessions, and I grant a nominal amount of **\$200** for extra storage costs.

The tenants did not provide evidence to establish that they gave the landlord their forwarding address in writing, and they are therefore not entitled to double recovery of the security deposit. They are, however, entitled to recovery of the base amount of the security deposit of **\$700**.

I find that for the most part, the costs for the male tenant's medication and compensation for the effects of the landlord's smoking and other behaviour are too substantially linked to the tenants' previous monetary claim that was dismissed. However, I accept the tenants' evidence that the landlord did deprive the tenants of

quiet enjoyment of the unit during the month of October 2014, by smoking on the property when he had been made aware of the tenants' issues with the cigarette smoke; by interfering with the tenants' use of the laundry facilities; and by telling the tenants to move out after he had agreed to let them stay for the month. I therefore grant the tenants compensation of **\$700** for loss of quiet enjoyment for October 2014.

The tenants did not provide sufficient evidence to support their claim for court costs, and the only cost associated with the dispute resolution process that is recoverable is the filing fee for this application. As the tenants' application was mostly successful, they are entitled to recovery of the **\$50** filing fee for this application.

The landlord is not entitled to their bailiff costs, as they were estopped from ending the tenancy before October 31, 2014. The landlord provided no evidence to support other compensation, and I cannot award "general damages."

Conclusion

The landlord's application is dismissed.

I grant the tenants an order under section 67 for the balance due of **\$5449.49**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: June 3, 2015

Residential Tenancy Branch

