



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, RR, O, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38;
- an order requiring the landlord to comply with the Act, Regulation or tenancy agreement, pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- other unspecified remedies;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 91 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Two witnesses, "witness JM" and "witness AA," testified on behalf of the tenant at this hearing. This hearing lasted approximately 91 minutes in order to allow the tenant and her two witnesses to fully present their submissions.

The tenant confirmed that the landlord was served personally served by witness JM with the tenant's application for dispute resolution hearing package ("Application") on June 1, 2015. Witness JM confirmed this service. In accordance with section 89 of the Act, I find that the landlord was served with the tenant's Application on June 1, 2015.

At the outset of the hearing, the tenant confirmed that she wished to withdraw her Application for an order requiring the landlord to comply with the Act, Regulation or tenancy agreement, an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and other unspecified remedies. Accordingly, these portions of the tenant's Application are withdrawn.

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?

Is the tenant entitled to a monetary award equivalent to double the value of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the tenant and her two witnesses, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The tenant testified that this tenancy began on February 1, 2015 and ended on April 30, 2015, as per a fixed term tenancy agreement of three months, after which it would transition to a month-to-month tenancy. Monthly rent in the amount of \$2,100.00 was payable on the first day of each month. A security deposit of \$1,050.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant explained that a written tenancy agreement governs this tenancy but she did not provide a copy for this hearing.

Witness JM lived with the tenant in the rental unit but confirmed that he was not named as a tenant on the tenancy agreement. He testified that he moved into the rental unit around February 11 or 12, 2015 and moved out about one week before the tenant left on April 30, 2015. The rental unit is a house. Another tenant lived in a separate suite that was adjoining, behind and below the tenant's rental unit. The landlord lived in a house next door to the tenant.

The tenant stated that move-in and move-out condition inspection reports were completed for this tenancy. The tenant testified that her written forwarding address was provided on the move-out condition inspection report on April 30, 2015, or on a piece of paper given to the landlord on that date. Witness JM stated that the written forwarding address was probably provided on the move-out condition inspection report. The tenant confirmed that the landlord did not have written permission to keep any amount from her security deposit. The tenant stated that she was not aware of any application made by the landlord to retain her security deposit.

The tenant seeks a monetary order totalling \$8,900.00 from the landlord. Specifically, the tenant seeks the following: \$2,100.00 for the return of double the amount of the security deposit, \$6,039.00 for the bad condition of the rental unit and \$761.00 for lost wages. The tenant also seeks to recover the \$100.00 filing fee paid for her Application.

The tenant stated that she is entitled to double the value of her security deposit because the landlord failed to return it or file an application to claim against it, within 15 days of the end of this tenancy and providing a written forwarding address, both on April 30, 2015. The tenant stated that she requested her security deposit back from the landlord around May 14, 2015. Witness JM stated that he refused a cheque in the amount of \$1,050.00 from the landlord for the return of the deposit on June 1, 2015 because it was more than one month late.

The tenant stated that she is entitled to a rent reimbursement of \$6,039.00, which is almost three months' rent, because she was required to stay in a negative environment in the rental unit in order to fulfill her fixed term tenancy agreement. The tenant stated that when she applied and interviewed for this rental unit, she advised the landlord that she was a quiet tenant, who worked long shifts and did not drink, smoke or party. She indicated that the landlord advised her that he was looking for an ideal tenant like her.

The tenant explained that when she moved into the unit, there were dogs in the backyard barking and crying for 24 hours a day during the tenancy. Witness JM confirmed this noise and noted that he made complaints to the City bylaw officer and took a video of the dogs barking so the officer could determine whether the dogs were okay. The tenant maintained that the landlord also had loud parties. Witness JM testified that the other occupants living downstairs constantly smoked marijuana and the smoke and smell were entering the tenant's rental unit. The tenant stated that the marijuana smoke interfered with her work because she is constantly drug-tested there. Witness JM noted that three to four complaints were made to the landlord regarding the marijuana smoke but nothing was done by the landlord to resolve the situation.

The tenant stated that the heat was not working properly so she contacted the landlord and he entered her rental unit without permission. When the tenant complained, she said the landlord moved the lock to the other side of the door, preventing her from accessing the heat controls and the laundry room where the controls were located. She said that she was unable to do laundry because of this action and the laundry was included as a service in her tenancy agreement. She indicated that another tenant who was living in the adjoined suite had access to her unit, due to the landlord moving the lock to the other side of the door where the other tenant was living. Witness JM confirmed all of the above information. The tenant maintained that the landlord refused to rectify the situation when she complained, until the tenant threatened to call a locksmith herself to fix the lock.

The tenant claimed that she paid for two parking spaces as part of her tenancy agreement and the landlord constantly used her parking spaces. Witness JM confirmed that the tenant had two parking spaces and that the landlord allowed other people to park in those spaces. The tenant stated that when the snow melted, the driveway where she was parking turned into loose dirt and gravel, damaging the undercarriage of her new vehicle. She stated that when she complained, the landlord barricaded one parking spot entirely so that the tenant could not park there. The tenant provided photographs of the gravel area, her vehicle and the landlord blocking her vehicle.

The tenant explained that when she confronted the landlord about issues, he would scream at her, make sexist comments towards her, and he was abusive, intimidating and threatening, eventually ceasing communication with her entirely. Witness JM confirmed that he confronted the landlord about noise issues and the landlord cursed and swore at him. He indicated that the landlord was unpleasant and had no respect for women and due to this, he began solely dealing with the landlord regarding tenancy matters approximately 1.5 months into the tenancy. The tenant provided numerous text messages to demonstrate the nature of the conversations between the parties.

The tenant stated that she called the City bylaw officers and the police to make noise complaints against the landlord and they told her to stay clear of the landlord and to move out. Witness JM confirmed that he spoke with the police and City bylaw officers about the landlord and that they told him to leave the rental unit, not to bother with the landlord and that the tenant was not safe alone with the landlord in the rental unit. Witness JM stated that he was unable to get written documentation from the City bylaw officer prior to this hearing, despite his request. The tenant stated that she would not have moved into the rental unit if she had known about these problems beforehand.

The tenant stated that she vacated the rental unit as soon as possible due to the above issues. Witness JM confirmed that the tenancy ended because the situation was toxic, he and the tenant were unable to work properly and they did not want to deal with the landlord anymore. The tenant noted that she had to take three days off from work in order to move. She confirmed that she was only claiming for one day of lost wages for this process. She indicated that she is not permitted to take time off from work in the

middle of a project and she had to do so in order to pack and move. She stated that she lost a total of \$761.00 in wages, of which \$275.00 was for her truck at work and \$486.00 was for work wages for taking a day off on a Sunday. The tenant maintained that she was not aware that she had to submit a paystub to prove her wages.

Witness AA, who is the tenant's work supervisor and project coordinator, testified that the tenant took one day off from work to move but she could not recall which day. She stated that the tenant is not permitted to take days off when on-site for a project and she should not have been allowed the time off. Witness AA maintained that the tenant gets \$270.00 per day for her work truck. Witness AA indicated that the tenant's regular wage is \$27.00 per hour. She indicated that during the week between Monday and Friday, the tenant gets paid wages for 8 hours of regular time and 4 hours of overtime and on weekends, the tenant gets paid wages for 12 hours of overtime. She noted that overtime pay is 1.5 times the regular pay wage and the tenant agreed with this.

Analysis

Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the tenant is entitled to double the value of her security deposit, totaling \$2,100.00. This tenancy ended on April 30, 2015 and the written forwarding address was provided on the same date by way of the move-out condition inspection report. Although the tenant did not provide the report as evidence at this hearing, I accept the tenant's and witness JM's undisputed testimony regarding the provision of the written forwarding address. The tenant did not give the landlord written permission to retain any amount from her deposit. The landlord did not return the deposit or file an application to retain the deposit within 15 days of April 30, 2015. Although witness JM refused the return of the deposit on June 1, 2015, this was already past the 15 day deadline of May 15, 2015 and is therefore, irrelevant.

Damages

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

Section 28 of the Act deals with the tenant's right to quiet enjoyment:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

I award the tenant \$200.00 in nominal damages for a loss of quiet enjoyment while living at the rental unit. I find that the tenant was disturbed by the landlord's loud parties, dogs barking constantly, the landlord blocking her parking spaces, a loss of heat and the landlord allowing access to her unit by another tenant. The tenant provided photographs of the landlord blocking her vehicle. I find that the tenant and witness JM provided undisputed testimony regarding the dogs barking constantly and the complaints made to City bylaw officers. I find that they also provided undisputed testimony regarding a temporary loss of heat in the rental unit and the landlord moving the lock to another door, thereby allowing access to the tenant's unit. I find that the tenant and witness JM provided undisputed testimony of the landlord's failure to resolve these complaints and issues. I find that the tenant did not provide sufficient documentary evidence of specific damage to her vehicle from the landlord's gravel parking area.

Lost Wages

Section 45(3) of the Act states that if a landlord has breached a material term of the tenancy agreement and failed to correct it within a reasonable period after the tenant gives written notice of the failure, a tenant may end a tenancy effective on a date after the date the landlord receives the notice. I find that there was no breach of a material term of the tenancy agreement permitting the tenant to end the tenancy without notice or on short notice.

I dismiss the tenant's claim without leave to reapply for \$761.00 in lost wages for having to move quickly from the rental unit. The tenant was aware when she began her tenancy on February 1, 2015, that the fixed term tenancy was to end on April 30, 2015. The tenant waited until the end of the fixed term to move out and she voluntarily chose this date to move out. The tenant could have made earlier arrangements to move on April 30, 2015, rather than leaving hastily and taking time off from work, as she noted that there were problems from early on in the tenancy.

As noted above, I accept that the tenant suffered a loss of quiet enjoyment and I awarded her compensation for the devaluation in her tenancy agreement and her use of the rental unit. However, the tenant did not leave the rental unit earlier than the fixed term date, due to a breach of a material term. The tenant did not file an earlier application, prior to this Application, at the Residential Tenancy Branch. She waited until well after the tenancy was over on April 30, 2015 to file her Application on May 28, 2015. If the landlord was breaching a material term, presumably the tenant would have filed an earlier application to rectify the numerous issues.

Filing Fee

As the tenant was only partially successful in her Application, I find that she is not entitled to recover the \$100.00 filing fee paid for the Application. The tenant must bear the cost of this fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,300.00 against the landlord as follows:

Item	Amount
Monetary Award of Double the Value of the Security Deposit, pursuant to section 38 of the <i>Act</i> (\$1,050.00 x 2 = \$2,100.00)	\$2,100.00
Nominal Damages for Loss of Quiet Enjoyment	200.00
Total Monetary Award	\$2,300.00

The tenant is provided with a monetary order in the amount of \$2,300.00 in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 tenant's Application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and other unspecified remedies, is withdrawn.

The tenant's Application for a loss of wages of \$761.00 and to recover the \$100.00 filing fee, 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: November 27, 2015

Residential Tenancy Branch

