Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, RPP, FF, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on August 24, 2015 for: return of the security deposit; for monetary compensation for loss under *Residential Tenancy Act* (the "Act"); for the return of his personal property; to recover the filing fee; and for "Other" issues of which none were disclosed during the hearing.

The Tenant, the Landlord, and the property manager appeared for the hearing and provided affirmed testimony. No issues were raised by the parties in relation to the service of the Tenant's Application or the parties' documentary evidence which had been served prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions, and cross examine the other party on the evidence provided. While I have considered the evidence provided by the parties in this case, I have only documented that evidence which I relied upon to make my findings in this decision.

Preliminary Issues

At the start of the hearing, I went through the Tenant's Monetary Order Worksheet in an effort to understand his monetary claim against the Landlord in the amount of $15,825.00. In relation to the Tenant's monetary claim for the return of the security deposit, the Tenant explained that he had not provided the Landlord with a forwarding address in writing at the end of the tenancy as the Landlord was aware of where the Tenant was residing. The Landlord confirmed that he had not been provided with a forwarding address in writing. The Tenant was informed of Section 38(1) of the Act which requires a tenant to provide the landlord with a forwarding address in writing **before** they seek the return of a security deposit.

It is not sufficient for the Tenant to claim the Landlord was aware of the address or to put the Landlord on notice of a forwarding address on an Application. Therefore, as the Tenant had not put the Landlord on notice of a forwarding address in writing prior to this hearing, I determined the Tenant's Application for the return of his security deposit was premature and could not be determined in this hearing.

However, as both parties were present, the Tenant confirmed the address on his Application was his forwarding address. Therefore, during the hearing I informed the Landlord that he has 15 days from the date of this hearing, until December 1, 2015, to either return the Tenant's security deposit or make an Application to keep it. As a result, the Tenant's Application for the return of his security deposit is dismissed with leave to re-apply.

The Tenant had made a claim for five months compensation on the basis that the Landlord had not used the rental unit for the reason indicated on the notice to end tenancy. The Tenant explained that when he spoke to the Residential Tenancy Branch about this they informed him that he could claim back monthly rent up until the date of this hearing. The Tenant was informed that pursuant to Section 51(2) of the Act, he was only eligible to claim for two month's compensation. Therefore, I only considered the Tenant's monetary claim for this portion of his Application in the amount of two months' rent payable under this tenancy.

The Tenant was also informed that costs associated with preparation for dispute resolution proceedings, such as postal charges and office supplies, are not awarded under the Act. Therefore, the Tenant's claims for these costs were dismissed.

Issue(s) to be Decided

- Is the Tenant entitled to monetary compensation payable to him after his tenancy was ended with a notice to end tenancy for the Landlord's use of the property?
- Is the Tenant entitled to monetary compensation for utilities, loss of storage space, loss of a locker space, and the loss of a car parking space?
- Has the Tenant established that there is personal property missing?

Background and Evidence

The parties agreed that this tenancy started on November 18, 2011 for a fixed term of one year which then continued on a month to month basis. The parties completed a written tenancy agreement which was provided into evidence. Rent for this tenancy

started off at $1,250.00 and was increased to $1,277.50 payable on the first day of each month. The Tenant paid the Landlord a security deposit of $600.00 in November 2011, which the Landlord still retains.

The parties agreed that the tenancy was ended when the Landlord served the Tenant with a 2 Month Notice to End Tenancy for Landlord Use of Property (the "Notice") on January 7, 2015. The Landlord testified that it was served by registered mail and the Tenant acknowledged receipt of it approximately one week later. The Notice was provided into evidence and parties confirmed that the reason for ending the tenancy was because the Landlord required the rental unit for his son. The vacancy date on the Notice was March 31, 2015.

The Tenant explained that he accepted the Notice and in accordance with the details documented on the second page of the Notice, he vacated the rental unit earlier on February 28, 2015. However, the Landlord failed to return to the tenant the month's rent compensation payable under the Notice.

Furthermore, the Tenant seeks to recover compensation payable to him under the Notice because he discovered that on the day he was moving out, the property manager informed him that the rental unit was being re-rented. The Tenant submitted that he had seen two unknown parties moving into the rental unit who bear no relationship to the Landlord or the Landlord's son. The Tenant submitted that his tenancy was only ended by the Notice because the Landlord wanted to rent out the unit for more money and that his tenancy was ended deceitfully. The Tenant submitted that the Landlord's son did not move into the rental unit and that neighbours of the rental unit had informed him that there were only two occupants of the rental unit.

The Landlord responded by stating that as the Tenant had moved out earlier, he was not entitled to the one month's compensation. However, the Landlord acknowledged the fact that the Notice and the Act still requires the Landlord to pay the Tenant compensation even if the Tenant moves out earlier.

The Landlord explained that his son moved into the rental unit because he wanted to experience apartment living and this was the reason for issuing the Notice. When the Landlord was asked about a tenancy agreement that he provided into evidence, he explained that this was the tenancy agreement for his son. The Landlord explained that his son was going to rent the unit from him but he could not afford the full rent of $1,600.00 so he asked two other parties to join the tenancy agreement as co-tenants so he could make the full payment to the Landlord (his father).

The Landlord provided a signed written statement from his son and one of the two co-tenants named on the new tenancy agreement. In these statements the Landlord's son and co-tenant confirm that the Landlord's son needed a place to live and that he accepted his father's offer to move into the rental unit. The Landlord's son writes in the statement that he spends a lot of time working out of town in construction and this was the reason why he took on the two 'room mates'. The Landlord explained that at the end of August 2015 his son moved out of the rental unit because he did not enjoy apartment living, preferring home living instead. As a result, the two co-tenants took over the tenancy agreement.

The Tenant explained that his tenancy agreement for his tenancy only required that he pay phone and internet utilities. The Tenant referred to section 6 of the tenancy agreement which states:

"UTLITIES: The Tenant is responsible for the payment of utilities as follows: BY LANDLORD, PHONE BY TENANT. The following utilities are included in the rent: [left blank]"

[Reproduced as written]

The Tenant stated that after a week of him taking occupancy of the rental unit, the power to the rental unit was cut off. The Tenant testified that he asked the Landlord why the power was cut off to which the Landlord responded that the Tenant was responsible for the hydro bills. The Tenant stated that he contacted the Residential Tenancy Branch about this and was informed that he should deal with this issue at the end of the tenancy. The Tenant explained that he put the utilities in his name and started to pay monthly hydro bills which he now seeks to recover from the Landlord in the amount of $3,334.00.

The Landlord testified that the "BY LANDLORD" referred to in the tenancy agreement was misunderstood by the Tenant and that the only utility that was covered was the phone and the internet. The Landlord testified that the Tenant was verbally informed that he was required to put the utilities in his name and pay the bills each month which he did. The property manager testified that she was the previous renter of the rental unit and that she also paid hydro bills for her tenancy as did the parties named on the new tenancy agreement that took over the rental unit after the Tenant's tenancy was ended.

The Tenant was asked whether he had informed the Landlord about the utility payments he was making at the start of the tenancy in writing. The Tenant replied that he did do this by computer to the Landlord. However, the Tenant failed to provide the 'computer' evidence he referred to in is oral testimony.

The Tenant then pointed back to the tenancy agreement and explained that section 10 provided him with two car parking spaces. However, during the tenancy, the Landlord did not provide him with two car parking spaces, choosing to use one for him during the tenancy.

The Tenant also provided similar testimony in respect to a storage locker that was provided to him for this tenancy. The Tenant explained that although this was not in the tenancy agreement, he was promised full access to the storage locker. Instead the Landlord continued to use 60% of the locker during the tenancy to store his personal belongings. The Tenant testified that he had verbally confronted the Landlord about this, but the Landlord informed him in an aggressive manner that he could do what he liked.

The Landlord disputed the Tenant's claim in this respect and testified that the original rent for the rental unit was supposed to be $1,400.00. However, this was reduced to the monthly rent that was paid in this tenancy because he had a verbal agreement with the Tenant that the Landlord would use half of the locker and one of the parking spaces during the tenancy. The Landlord testified that the Tenant did not have a second car and that he (the Landlord) only used the second car parking space during the summer months.

The Tenant explained that the Landlord used the second bedroom in the rental unit to store his personal furniture. The Tenant testified that in December 2014, the Landlord came to the rental unit and removed the Tenant's personal furniture from the second bedroom and replaced it with his own bedroom furniture as a means to store it. The Tenant testified that the Landlord tried to bring in a bed frame and mattress and when he objected to this, the Landlord placed it into the Tenant's storage locker.

The Tenant alleged that the Landlord had stolen personal property belonging to the Tenant from his storage locker. However, the Tenant was not sure about which items were missing and submitted that this included desk lamps as detailed on his Monetary Order Worksheet.

The Landlord testified that the Tenant had no furniture in the second bedroom so they offered him an old dresser and mirror which the Tenant accepted. The Landlord testified that the Tenant used this furniture as provided to him for his tenancy. The Landlord explained that after his mother passed away inherited some newer bedroom furniture which he offered to the Tenant. The Landlord explained that the Tenant was not happy about having it but accepted it on the understanding that it was to remain there at the end of the tenancy.

Analysis

Section 51 of the Act provides that a tenant who is served with a Notice is entitled to receive from the landlord on or before the effective date of the Notice one month's rent as compensation. Furthermore, Section 50(3) of the Act states that if a tenant ends a tenancy early after being served with a Notice, the tenant is still entitled to the compensation payable under Section 51 of the Act.

It was undisputed that the tenancy was ended with a Notice under the Act and the Landlord confirmed that the Tenant was not given the compensation payable to him. I find that irrespective of whether a tenant moves out early, a tenant is still entitled to the compensation payable under the Notice and the Act. Therefore, the Tenant is awarded **$1,277.50** in monetary compensation for this portion of his Application.

In relation to the Tenant's claim for compensation due to the Landlord's failure to use the rental unit for the purpose indicated on the Notice, I make the following findings. Section 51 (2) of the Act states if:

> *(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*
> *(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*
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> [Reproduced as written]

In considering the parties' evidence in this respect, I find the evidence shows that the Landlord provided the rental unit to his son for re-rental in an amount that was higher than what the Tenant was being charged for his tenancy. This suggests that even though it was the Landlord's son that was ostensibly paying rent to his father (the Landlord), the Landlord was obtaining monetary relief for this new arrangement after the Tenant's tenancy was ended. I find the evidence provided by both parties convinces me that the Landlord's financial gain from increasing the rent was the primary motive and objective for ending the Tenant's tenancy and I find that this is not the intended purpose of a Notice.

I am also not satisfied that the Landlord's son took occupancy of the rental unit. Although the Landlord provided statements from his son and a tenancy agreement naming his son, I find this evidence is not sufficient for me to conclude that the Landlord's son took actual occupancy of the rental unit. Although the Landlord's evidence was that his son spent periods of time not residing in the rental unit as he was out of town working, the Landlord did not provide evidence such as utility bills in the name of the Landlord's son which would have been proof that the Landlord's son was occupying the rental unit.

Furthermore, I find the fact that the co-tenants were also part of this re-rental suggests that Tenant was not in a position to pay the full amount of rent on the new tenancy agreement. Therefore, if the Landlord's son wanted to experience apartment living it would have been more plausible to provide the rental unit at a significantly reduced rate or at no cost to the Landlord's son.

In this respect I found the Tenant's evidence that the rental unit was not used for the reason indicated on the Notice more compelling than the Landlord's evidence. Therefore, I find the Tenant is entitled to the two months' of compensation provided by Section 51(2) of the Act in the amount of **$2,555.00**.

In relation to the Tenant's remaining Application, I have taken into consideration the following. A party that makes an Application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in Sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Section 7(2) of the Act provides that party making a claim for monetary compensation for non-compliance with the Act, must do whatever is reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

In relation to the Tenant's claim for utilities, I find the tenancy agreement does not clearly stipulate exactly which utilities the Tenant was not responsible for paying; and, exactly what utilities were included in the rent as this area on the agreement was left blank. The Tenant explained that he had confronted the Landlord about having to pay for hydro in this tenancy but was advised by the Residential Tenancy Branch that he should deal with this issue at the end of the tenancy.

While I was not party to this conversation that took place between the Tenant and the Residential Tenancy Branch, I find that pursuant to Section 7(2) of the Act, the Tenant did not take reasonable steps to mitigate loss. Notwithstanding the Tenant's argument that he was advised to take no action in this respect until the end of the tenancy, I find it unreasonable that the Tenant allowed the hydro utilities to accumulate to such a high level during the tenancy. As a result, I find the Tenant should not escape the obligation to mitigate the accumulating amount as required by Section 7(2) of the Act.

I find the Tenant has not provided sufficient evidence before me that he brought this matter to the attention of the Landlord and demanded remedy by either allowing the Landlord to correct the situation or by pursuing the mater through dispute resolution to obtain legal remedy, which would have resulted in mitigation of the loss.

I find the conflicting evidence of both parties in relation to which party was responsible for paying does not allow me to make a finding on who was responsible for paying the hydro. Therefore, on the basis that the Tenant failed to mitigate loss pursuant to the Act, I find the Tenant's Application for utilities must be dismissed.

I also dismiss the Tenant's Application with respect to the return of his personal property. This is because the Tenant has failed to establish which items were missing from his storage locker and that the Landlord was directly responsible for an alleged theft. I also find that the Tenant failed to provide sufficient evidence to verify the loss of the property that was alleged to have been stolen.

In relation to the Tenant's claim for the lack of full access to his storage locker, I dismiss his claim for this amount. This is because the tenancy agreement does not detail that

the Tenant was provided with full access to a storage locker. The Landlord claimed that they had a verbal agreement that they were going to share the storage locker and the Tenant's lack of action to remedy this matter suggests that he was complicit to this agreement. Furthermore, I find the Tenant failed to also provide sufficient evidence of how the Landlord used 60% of the storage locker and only provided him with 40%.

In relation to the Tenant's allegation that the Landlord stored personal furniture in the second bedroom of the rental unit, I find the parties evidence results in one party's word against the others. The Landlord submitted that he did place furniture in the rental unit which the Tenant used and this was done with the agreement of the Tenant. Notwithstanding the Tenant's argument that this was the case, I find the Tenant has not provided sufficient evidence of the following: that the furniture was placed there without his agreement; that he did not use the furniture; how the furniture being there caused him loss; and why he did not take steps to have this situation remedied. Therefore, I also dismiss this portion of the Tenant's Application.

In relation to the Tenant's monetary claim for the car parking space that was used by the Landlord, I am satisfied by the tenancy agreement that the Tenant had two car parking spaces provided to him at the start of the tenancy. The Landlord claimed that he had a verbal agreement with the Tenant that he would use only one car parking space because he only had one vehicle. However, as the Tenant disputed this, I find the Landlord's oral evidence is not sufficient to rebut the signed tenancy agreement which clearly provides the Tenant with two car parking spots. Therefore, I find the Landlord failed to provide the Tenant with two car parking spaces during this tenancy.

In assessing the Tenant's monetary amount claimed for this portion of his Application, the Tenant claims $1,500.00 (30 months at $50.00) for not having the car parking space. In this respect, I find the Tenant failed to provide sufficient evidence of how he suffered this loss and how the lack of the second car parking space caused him to incur $1,500.00 in loss. Furthermore, I find the Tenant failed to mitigate loss under Section 7(2) of the Act by not bringing this matter to the Landlord in writing or requesting remedy through dispute resolution, instead allowing the matter to continue throughout the tenancy.
Policy Guideline 16 to the Act states that an Arbitrator may award "nominal damages', which are a minimal award. These damages maybe awarded where there has been no significant loss or the loss has not been proven, but there is an affirmation that there has been an infraction of a legal right. On this basis, I am only prepared to award the Tenant four months in the amount of $50.00 each as this would have been the time period that it would have taken for the Tenant to have obtained remedy for this matter. Therefore, the Tenant is awarded **$200.00** for this portion of the claim.

As a result, the total amount awarded to the Tenant is $4,032.50 (1,277.50 + 2,555.00 + $200.00). As the Tenant has only been partially successful in his Application, I am only prepared to award the Tenant half of his filing fee in the amount of **$50.00**. This is pursuant to Section 72(1) of the Act.

Therefore, I grant a Monetary Order in the amount of **$4,082.50** in favor of the Tenant pursuant to Section 67 of the Act. This order must be served on the Landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if payment is not made. Copies of this order are attached to the Tenant's copy of this decision.

Conclusion

The Tenant's claim for the return of his security deposit is dismissed with leave to re-apply as the Tenant did not provide the Landlord with a forwarding address in writing. I have granted portions of the Tenant's monetary claim but only in the amount of $4,082.50.

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 17, 2015

Residential Tenancy Branch