Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought a Monetary Order for $24,000.00 for money owed or compensation for damage or loss under the act regulation or tenancy agreement as well as to recover the filing fee.

The hearing occurred over three days; namely, November 5, 2015, January 19, 2016 and March 14, 2016 all by conference call. Both parties appeared at the hearings. The corporate landlord, W.M., was represented by the senior property manager, G.M. The Tenant appeared on his own behalf. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

Although there were issues with respect to delivery and service of evidence raised at the initial hearing, those issues were subsequently resolved. No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

Naming of the Corporate Landlord

The Landlord confirmed that the proper respondent is the corporate Landlord, W.M., who is the owner of the rental unit. By interim decision dated November 10, 2015, and

pursuant to section 64(3)(c) of the *Residential Tenancy Act*, I amended the Tenant's Application for Dispute Resolution to name the corporate Landlord, W.M.

Res Judicata

At the outset of the hearing on November 5, 2015 the Landlord submitted that the entirety of the Tenant's claims had been dealt with at prior arbitrations (January 25, 2008, December 30, 2008, and August 14, 2015 hearings) and therefore I was prohibited from rehearing the claims based on the legal principle, *Res Judicata*.

By Interim Decision dated November 10, 2015 I found as follows:

1. The Tenant's claim for compensation for possessions he claims were either sold or disposed of by the Landlord was not dealt with in any previous arbitration.

2. The Tenants claim for monetary compensation for losses incurred *prior* to December 30, 2008, or for amounts already provided for by way of the rent reductions ordered in the December 30, 2008 hearing have already been decided such that I am not able to rehear them, by the principle of *Res Judicata.*

3. The Tenants claim for compensation for work he claims to have performed on the boiler will be considered in light of the findings made in the January 25, 2008 Decision and in particular the October 2, 2006 settlement agreement.

Issues

1. Is the Tenant entitled to compensation pursuant to section 67 for possessions he claims were either sold or disposed of by the Landlord?

2. Is the Tenant entitled to monetary compensation for deficiencies in the rental unit?

3. Is the Tenant entitled to compensation for work he performed on the boiler?

4. Should the Tenant recover the filing fee?

Background and Evidence

This tenancy began April 1, 2015 and relates to a rental unit which I will identify as the subject rental unit, 403. Until April 2015, the Tenant resided in another rental unit, 402, in a building across the street from the rental property, also owned by the Landlord.

The Landlord was granted an Order of Possession of rental unit 403 by Decision dated August 14, 2015. While the Decision provided the Landlord with discretion to withhold enforcement of the Order and reinstate the tenancy, the Landlord chose to enforce and the Tenant was evicted from the subject rental unit, during the week before the initial hearing.

In the within application, the Tenant claimed he was hired in June of 2005 by the Landlord to renovate his previous rental unit, 402, and tend to the boiler at the rental unit. He claimed that he was not paid for his services with respect to the boiler. In this regard he seeks $1,600.00.

The Tenant also sought return of a percentage of the rent he paid for a 10 year period. In his written submissions filed in support of his claim he claimed compensation in the amount of 25% of the rent he paid for 10 years for 402, or $22,250.00. During the hearing the Tenant testified that he in fact sought the sum of $14,400.00, representing 30% of his monthly rental payments paid. He did not provide any explanation for these calculation discrepancies.

The basis of the Tenant's claim for a lump sum rent reduction was his claim that he was forced to live in 402, which he characterized as a 70% unfinished rental unit for 10 years. He claimed 402 had the following deficiencies:

- He claimed the 402 rental unit was missing the following:
    - baseboard mouldings;
    - bathroom vanity;
    - bathroom fan;
    - back splash in bathroom or kitchen;
    - closet doors;
    - hood fan for the range
    - light fixtures in the living room and kitchen; and
    - peep hole in the front door.
- He also claimed that the bedroom was unpainted and there were holes in the walls.

As part of the within application, the Tenant further claimed that the building manager, D.J. disposed of the Tenant's possessions on or about June 7, 2010. The Tenant alleges D.J. went to the Tenant's storage locker while the Tenant was on holidays, removed the items and either disposed of them, or sold them. He claims these items were valued at "$4,000.00 to $5,000.00" and submits that D.J. promised to pay the Tenant back, yet never did.

The Tenant also writes that on April 1, 2015 when he moved from 402 to 403, he was permitted to take his time moving and that during this time, D.J. disposed of his possessions which remained in 402. He further submitted that D.J. threw his items off the roof and into the parking lot below.

In support of his claims the Tenant introduced various "invoices" which he had prepared and delivered to the Landlord. These include the following:

April 1/15 Invoice

This invoice included a claim for $440.00 for work the Tenant claims to have done on the boiler as well as the following for items he alleges D.J. threw out of his rental unit:

Chain saw	$550.00
Hot tub	$200.00
Antique chair from France	$150.00
Kitchen gear	$300.00
Gold (which includes the notation "sure he stole it")	$1,200.00
Life time of family pictures	Priceless
Fridge and stove	$500.00
TOTAL	$2,900.00

On the April 1/15 invoice he also claims return of his damage deposit in the amount of $450.00; however, this claim was not noted on his Application for Dispute Resolution filed June 4, 2015. Further, the figures on the April 1/15 invoice do not total $4,190.00 as written on the invoice; rather, they total $3,850.00.

July 22/15 Invoice

The total of this invoice is $4,000.00 for the following:

"ITEMS REMOVED FROM MY STORAGE LOCKER [address withheld] AND SOLD AT GARAGE SALE TOOLS, CAMPING GEAR, HOUSEHOLD ITEMS, BUILDING SUPPLIES"

[Reproduced as Written]

July 22/15 Invoice (notably this is the second one issued with that date)

On this invoice the Tenant has claimed $22,250.00 for the following:

"10 YEARS LIVING IN AN UNFINISHED APPARMENT. 60-70% UNFINISHED. RENT FOR 10 YEARS APPROX $90,000.00 25% OF $90,000.00"

[Reproduced as Written]

June 11/15 Invoice

On this invoice the Tenant has claimed $2,200.00 for the following:

DAMAGE DEPOSIT STILL NOT PAID	$550.00
PENALTY FOR NOT PAYING IN 15 DAYS (READ RENTAL AGREEMENT)	$550.00
BOILER REPAIR & SERVICE 4 HRS @ $100.00 PER March 13/15 4 HRS @ $100.00 PER APRIL 9/15	 $400.00 $400.00
CHEQUE	$300.00
* REGULAR RENT PAYMENTS WILL RESUME JULY 1ST	
RENT MAY & JUNE	$2,200.00

The Landlord's agent, G.M., testified at the hearing and submitted a substantial written reply to the Tenant's claims.

He submitted that the Tenant's claim for compensation for items allegedly disposed of by the Landlord should be dismissed. He testified that at no time did the Landlord, the Landlord's agents, or any employees of the Landlord dispose of the Tenant's personal possession. He further submits that the Tenant's claim should be dismissed as the Tenant failed to provide any evidence to support a finding that these items existed, or of their actual value.

G.M. further submitted that the Tenants claim for compensation for work he claims to have performed on the boiler should be dismissed pursuant to the October 2, 2006 agreement whereby the Tenant was prohibited from doing any further work without the written agreement/authorization of the Landlord. He testified that at no time after the agreement was reached was the Tenant authorized to perform such work and as such no compensation is warranted.

G.M. submitted that the Tenant's claim for $14,400.00 for losses he claims to have incurred due to the condition of rental unit 402 should similarly be dismissed as having already been decided. In this regard he provided me copies of the aforementioned decisions. He also testified that at no time did the Tenant provide a written list of requested repairs as required by the January 25, 2008 Decision.

Analysis

After careful consideration of the testimony of the parties and the evidence filed, I find as follows.

Security Deposit

Although the June 11/15 Invoice submitted in evidence by the Tenant references the Tenant's security deposit and suggests he seeks its return, the Tenant applied for dispute resolution on June 5, 2015 while the tenancy was ongoing. Accordingly, I find that at the time, the application was premature.

Further, on his application, and the attached Monetary Orders Work sheet the Tenant makes no mention of the security deposit, such that it is likely the Landlord would not have anticipated the Tenant was seeking return of his deposit.

Further, the invoice seems to indicate the Tenant seeks return of his deposit from 402; yet it is notable that in the August 14, 2015 Decision, that the Tenant's security deposit from 402 was transferred to his tenancy for 403.

In any case, the Tenant also failed to submit any evidence to support a finding that he has provided the Landlord with his forwarding address in writing as required by section 38 of the *Residential Tenancy Act*. In fact, during the hearing, he claimed to have no fixed address. Pursuant to the *Act,* the Landlord is not required to deal with the security deposit until such a forwarding address is provided. The Tenant is at liberty to apply for return of his security deposit once such an address is provided to the Landlord. Notably, this decision does not extend any time limits*,* including section 39 of the *Act.*

Tenant's Claim for Monetary Compensation

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act),* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing *all four* of the following:

1. that a damage or loss occurred;

2. that the damage or loss was the result of a breach of the tenancy agreement or *Act*;

3. the amount of the loss or damage; and,

4. that the party claiming damages took reasonable steps to mitigate their loss.

In this case, the Tenant bears the burden of proving his claim.

I will deal with the Tenant's monetary claim in the order written on his monetary Orders worksheet.

The Tenant claimed $4,8000 in compensation for belongings he alleges D.J. threw out of his rental unit when he moved from 403 to 402. These items are particularized in his April 1/15 invoice and reproduced earlier in this my Decision. Aside from his testimony, and the invoice he personally prepared and delivered to the Landlord, there is no further evidence submitted by the Tenant to support a finding that the Landlord, or the Landlord's agents disposed of these belongings. Such further evidence might have included photos of the items or the rental unit. Further, the Tenant fails to provide any evidence which would support a finding that these items existed, or their value.

The Tenant also claims the sum of $4,200.00 for items he claims D.J. removed from the Tenant's storage locker and sold at a garage sale. These items are particularized in his July 22/15 invoice and reproduced earlier in this my Decision. Again, aside from his testimony, and the invoice he personally prepared and delivered to the Landlord, there is no further evidence submitted by the Tenant to support a finding that the Landlord, or the Landlord's agents disposed of these belongings.

The Landlord denies that D.J., or anyone acting on behalf of the Landlord disposed of the Tenant's belongings from the storage locker or the Tenant's rental unit.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further corroborating evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, I find the Tenant has submitted insufficient evidence to support a finding that the Landlord, or the Landlord's agents or employees, disposed of his belongings, either from storage or the rental unit and accordingly I dismiss his claim for $9,000.00.

The Tenant submits he should be compensated $1,600.00 for work he says he performed on the boiler during his tenancy.

This is not the first time the Tenant has brought forth this claim. The history of the proceedings between the parties, and in particular the Decision made January 25, 2008 confirms that the parties reached an agreement in October of 2006 that the Tenant was not to perform any further services without the written agreement of the Landlord.

In the hearing before me, the Tenant failed to submit any evidence to support a finding that the Landlord provided the Tenant with such written agreement/authorization. While it is possible the Tenant may have performed this work on his own volition, there is no evidence to show the Landlord *authorized* such work, or *agreed* to compensate him. Accordingly, I dismiss the Tenant's claim for compensation in the amount of $1,600.00 for work he claims to have performed on the boiler during his tenancy.

The Tenant also sought return of a percentage of the rent he paid for a period of 10 years. As noted previously in my Decision, during the hearing the Tenant testified that he in fact sought the sum of $14,400.00, representing 30% of his monthly rental payments paid for 402.

The history of these proceedings shows that the Tenant has made previous applications wherein he has sought Orders compelling the Landlord to make various repairs to unit 402. At times he was successful and repair orders were made, or his rent was reduced. At other times, he was unsuccessful having not proven his claims. I am not able to reconsider those particular claims; in this regard, the Landlord is correct in arguing that the principle of *Res Judicata* prevents a rehearing of such claims. Accordingly, I find that the Tenant' claims relating to the condition of the rental unit prior to January 25, 2008 have already been decided.

With respect to any ongoing issues, the January 25, 2008 Decision provided the Tenant with clear instructions as follows:

> *11) If the tenant is serious about repairs and renovations, then he may provide a list of needed repairs to the landlord and the landlord can then act accordingly.*
> *…*

In the within hearing, the Tenant failed to provide any evidence to support a finding that he in fact provided the landlord with this list of repairs.

Section 7 of the *Residential Tenancy Act* provides as follows:

> **Liability for not complying with this Act or a tenancy agreement**
>
> **7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the Tenant failed to mitigate his losses, by failing to submit a list of requested repairs to the Landlord. Further, had the Landlord failed to make requested repairs after receiving such a list, the Tenant could have applied for further Orders pursuant to section 32 of the *Act*. The history of the proceedings indicate the Tenant was more than capable of making such requests and I find that it is simply not reasonable for the Tenant to wait until the tenancy ends to request a portion of his rent back.

Accordingly, I dismiss his claim for compensation in the amount of $14,400.00.

The Tenant, having been unsuccessful, is not entitled to recover the filing fee.

Conclusion

The Tenant's claim is dismissed in its entirety.

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: April 12, 2016

Residential Tenancy Branch