



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, RPP

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order that the landlord return the tenant's personal property.

The tenant and one of the named landlords attended the hearing, each gave affirmed testimony, and the parties were given the opportunity to question each other and make closing submissions. The tenant also provided evidentiary material in advance of the hearing, all of which has been reviewed and is considered in this Decision.

The tenant served one of the named landlords (JV) with the application for dispute resolution and notice of this hearing, but did not serve the other named landlord (TK). The landlord who attended the hearing was the landlord served, and I dismiss the tenant's application with respect to the other named landlord (TK).

No other issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for personal possessions damaged or missing from the rental unit?
- Has the tenant established that the landlord should be ordered to return the tenant's personal belongings?

Background and Evidence

The tenant testified that this month-to-month tenancy began on October 1, 2015 and the tenant physically moved out on March 3, 2016 but some of the tenant's items remained in the rental unit until March 14, 2016. A tenancy agreement was signed at the commencement of the

tenancy but the tenant did not receive a copy. The tenant has provided a copy of a new tenancy agreement showing that the tenant moved into a new rental unit on March 3, 2016.

The rental unit was a full house, a single family dwelling. Rent in the amount of \$750.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$375.00 which is still held in trust by the landlord, and no pet damage deposit was collected. No move-in or move-out condition inspection reports were completed, so the tenant took photographs at the beginning of the tenancy. The tenant attempted to schedule a move-out condition inspection, but the landlord would not return any of the tenant's calls.

The tenant further testified that on March 30, 2016 the tenant texted the landlord with a forwarding address, and the landlord responded by text message. Copies have been provided. There was absolutely no damage left in the rental unit. An agent for the landlord completed inspections of the rental unit monthly during the tenancy and the tenant was never notified of any damages claimed.

The rental unit and some of the tenant's belongings suffered mold damage during the tenancy. Mold was growing on the beds of the tenant's children, and one child slept on the floor in the kitchen and the other in the living room for the months of December, 2015 and throughout January and February, 2016 until the tenant moved out. The bedroom was closed off with a tarp and the door remained closed till the end of the tenancy. The landlord sent a worker in to cut holes in walls and mold was found behind the drywall. The worker took samples, and the parties agreed that the tenant would move out so workers could continue with mold restoration. The landlord wanted the tenant to move back in after restoration was completed but the tenant was not able to financially.

The landlord had a contractor attend, and 3 fishing rods, a mountain bike, a swimming pool, 2 adult life jackets, 2 children's life jackets, a carpet cleaner, vacuum, 3 sets of adult skis, a child's pool and 2 push toys were removed from the rental unit during that time. The tenant saw the child's pool, mountain bike, 2 sets of skis and toddler toys in front of the home of the contractor's son. The tenant approached him and he said that his father gave them to him and told the tenant to talk to the contractor. He would not provide a phone number but took the tenant's phone number to pass on, but the tenant never heard from him. The tenant also told the landlord's agent who told the tenant to talk to the landlord, but the landlord said he didn't care and that it was the tenant's problem. The tenant claims \$1,800.00 for those lost or stolen items. The tenant has also provided photographs that the tenant testified were taken on March 29, 2016 showing the tenant's belongings at the contractor's son's house. The tenant has also provided a hand-written list containing the items taken and values:

- \$430.00 for 3 fishing rods;
- \$180.00 for the mountain bike;
- \$190.00 for the swimming pool;
- \$190.00 for the life jackets;

- \$350.00 for the carpet cleaner;
- \$90.00 for the vacuum; and an unknown amount for 3 sets of keys.

The tenant has provided an estimate showing a cost of \$249.97 for a “loft shag,” which the tenant testified was a rug taken from the rental unit by the landlord’s worker.

Also provided are 5 photographs of the couch showing serious mold spores, which the tenant testified were all taken around March 1, 2016 prior to moving out. The tenant also claims compensation for other items damaged due to the mold in the rental unit, and has provided estimates from The Brick in the form of a Monetary Order worksheet. The tenant claims:

- \$2,707.40 for a queen mattress;
- \$150.00 for a queen box;
- \$109.97 for a mattress pad;
- 129.97 for a bed frame;
- 79.97 for a terry bamboo mattress pad;
- \$79.97 for a second terry bamboo mattress pad;
- \$217.00 for a twin mattress;
- \$217.00 for a second twin mattress;
- \$701.42 for a reclining chair;
- \$701.42 for a second reclining chair;
- \$377.67 for an armless chair;
- \$215.80 for a console; and
- \$593.66 for a “black brown wedge.”

The tenant testified that the child’s beds were brand new as of August, 2015, and the tenant’s bed was 2 years old. The couch was taken to the dump, and it was 5 years old.

The tenant also testified that she was asked to keep the power and gas in her name so that repairs could be made, and the tenant has provided bills for April, 2016 for which the tenant claims against the landlord. The power bill is \$17.88 for April 4 to April 27, 2016 and the gas bill is \$111.64 for March 4 to April 6, 2016. The landlord didn’t return post-dated rent cheques to the tenant and tried to cash one on March 7, 2016 after the tenant had moved out.

The landlord testified that the tenant was supposed to be out of the rental unit by March 1, 2016 and the landlord arranged for the roof to be replaced. The tenant had complained about mold in the bedroom, and the landlord thought it was a soft-drink spatter and didn’t see any mold when he was there in September, 2015.

The landlord had hazmat people there to drill the drywall for asbestos, but the tenant turned them away on March 2.

The tenant didn't leave when she was supposed to and stayed until the 18th and 19th of the month without paying any rent. The landlord's bookkeeper presented the post-dated cheque but it was dishonoured.

The landlord didn't make an application for dispute resolution claiming against the security deposit because no rent was paid and it should be forfeited. The landlord didn't get the key back from the tenant until March 18, 2016 and the tenant left numerous bags of garbage behind. Also left was garbage all over the front yard and the next door neighbour cleaned it twice because it was blowing around the yard.

The tenant also left damages, such as a transition strip between the living room and the hallway and had drilled holes into the plaster for a television mount.

The landlord further testified that he is suspicious of the balance of the tenant's claim. There may be fraud involved. A previous landlord of the tenant told the landlord that the tenant left that tenancy without proper notice and the landlord found no mold. The tenant boasts that she got paid a lot of money due to mold, and perhaps there is a pattern. The landlord did put a new roof on the rental home; it was time.

The landlord also testified that he received a report from professionals that says no asbestos or mold was found. The company tested 1 inch diameter holes in drywall and the report came back negative. A copy has not been provided, however the landlord testified that on March 9, 2016 workers were in the rental unit to interview a roofer, which took an hour or so, and during that time they observed the tenant sitting in the bedroom, obviously not worried about mold.

The landlord does not dispute receiving the tenant's forwarding address in a text message and believes he got it twice. The landlord sent to the tenant a letter stating why she wouldn't be getting the security deposit back, primarily because she didn't vacate when she was supposed to, and it cost \$200.00 to get rid of the garbage.

The landlord stated that he cannot comment on the tenant's photographs, and the rental unit was re-rented somewhere around the beginning of April, 2016.

The landlord also denies telling the tenant that her missing items were not his problem. The landlord also denies asking the tenant to leave utilities in her name so that repairs could be made. It was up to the tenant to cancel the utilities and she didn't do so. The tenant told the landlord in February, 2016 that she had to move out, and the landlord offered his Visa to rent a truck, but the tenant didn't use it.

Analysis

Firstly with respect to the security deposit, the *Residential Tenancy Act* states that a landlord has 15 days from the later of date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return it in full or make an application for dispute

resolution claiming against it. If the landlord does neither, the landlord must repay the tenant double the amount.

The tenant testified that the parties agreed that the tenant would move out, and the tenant told the landlord on February 23, 2016 that she found a place for March 3, 2016 and needed to leave some items in the rental unit longer. The *Residential Tenancy Act* specifies how a tenancy ends. A landlord may end a tenancy for cause, for unpaid rent or utilities, or for landlord's use of property. A tenant may end a tenancy without providing a reason, or the parties may mutually agree in writing to end the tenancy. I have reviewed the evidentiary material and there is no agreement in writing to end the tenancy. The landlord did not dispute that there was a mutual agreement, but testified that the tenant was supposed to be out by March 1, 2016. The tenant testified that rent was payable on the 1st day of each month, and any notice given by either party to end the tenancy would not have taken effect until March 31, 2016. Further, although the parties disagree as to the date the tenant's belongings were removed, there is no question that the tenant had occupancy well into the month of March, 2016. Therefore, I find that the tenancy ended on March 31, 2016.

The parties agree that the landlord received the tenant's forwarding address in a text message, and the landlord believes he received it twice. The tenant testified that it was provided on March 30, 2016 and provided a copy. Normally, providing a forwarding address in a text message is not sufficient, but where a landlord agrees that he has it, responded to it, and given that the landlord testified that he sent the tenant a letter denying the request for the security deposit, I find that the landlord has received the forwarding address in writing for the purposes of the *Act* on March 30, 2016. The landlord withheld the security deposit because he believed he was entitled to. In the circumstances, I find that the tenant is entitled to double the amount, or **\$750.00**.

The landlord has not provided any evidentiary material, however, where a party makes a monetary claim for damages against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate the damage or loss suffered.

In that regard, the tenant claims damages caused to personal belongings by mold and damages to replace missing items. With respect to damages caused by mold, I have reviewed the photographs and it is very clear that a serious mold problem existed in the couch and I accept that the tenant has established that damage or loss exists for furniture. Considering the other photographs of moss from the roof and a wall that was tarped, and the landlord's testimony that it was time for a new roof, I also accept that the tenant has established that the damage to the

tenant's furniture was a result of the landlord's failure to provide and maintain a rental unit in a state that made it suitable for occupancy by a tenant.

However, I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements which puts the expected useful life of furniture at 10 years. The tenant testified that the couch was 5 years old, and ordering the landlord to purchase a new couch when the tenant didn't have a new couch would put the tenant in a better financial situation than if the damage had not occurred. I accept the estimate provided by the tenant, and I assume that the "black brown wedge" is the cost to replace the couch at \$593.66, and I find that the tenant has established the claim of half, or **\$296.83**. Similarly, I accept that the children's beds were damaged, and I accept the claim of \$217.00 for each of the 2 beds, and less the depreciation is **\$173.60 each**. I am not satisfied that the tenant has demonstrated that there were mattress pads on any of the beds, and I dismiss those portions of the claim.

With respect to the balance of the tenant's claim for furniture replacement (queen set, recliners, armchair, console) the amounts are considerably high in my opinion. The tenant was careful to take photographs of the rental unit and the couch but has not provided any evidence of what quality of furniture the tenant lost. Particularly, I find a queen mattress at \$2,707.40 to be expensive considering the box and frame are separate costs. The same applies to the recliners and chair claimed by the tenant. The *Residential Tenancy Act* allows me to make an order affirming that the debt is owed, and I grant a nominal amount of **\$500.00** for the queen bed and **\$300.00** for the recliners and chair.

With respect to lost or stolen items, having found that the tenancy ended on March 31, 2016, the landlord had an obligation to ensure that the tenant's items were secure while allowing contractors into the rental unit. There is substantial evidence that some of the tenant's items were seen at the home of the contractor's son. Therefore, I find that the tenant has established elements 1 and 2 in the test for damages. The photographs show miscellaneous items, and considering their replacement cost, the tenant's claim of \$1,800.00 may be justified, however I have no evidence to satisfy me what their age, condition or worth is. The tenant has provided a hand-written estimate, but has not provided any evidence of where those estimates were taken from. I grant a nominal amount of **\$500.00** to the tenant for those lost or stolen items.

With respect to the claim for utilities, the landlord testified that the tenant was supposed to cancel them but failed to do so. I am not satisfied that the tenant has established that the landlord asked the tenant to leave them in her name so that repairs could continue to be made to the rental unit, and therefore the tenant has failed to establish element 2 in the test for damages.

In summary, I find that the tenant has established a claim in the amount of \$750.00 for the security deposit; \$296.83 for the couch, \$347.20 for the twin beds; \$500.00 for the queen bed, \$300.00 for the recliners and chair, and \$500.00 for lost or stolen items, for a total of \$2,694.03.

Conclusion

For the reasons set out above, the tenant's application as against the second named landlord (TK) is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the first named landlord (JV) pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,694.03.

This order is final and binding and may be enforced.

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 14, 2016

Residential Tenancy Branch