



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, FF; RPP, MNDC, OLC, FF, LRE

Introduction

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

- cancelation of the landlord's 10 day notice to end tenancy for unpaid rent ("10 Day Notice"), pursuant to section 46;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- order the landlord to comply with the *Act*, regulations or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

During the hearing the parties agreed to have the matter of the tenant's second application addressed in this hearing. This hearing addressed the tenant's second application pursuant to the *Residential Tenancy Act* (the "Act") for:

- order the landlord to return the tenant's personal property pursuant to section 65;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- order the landlord to comply with the *Act*, regulations or tenancy agreement, pursuant to section 62;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72; and
- order the landlord to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70;.

The tenant and landlords along with the landlord's agent, DH (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlords confirmed receipt of the tenant's applications ("Applications") for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the Applications.

At the outset of the hearing, the tenant testified that he had already vacated the rental unit on June 6, 2016 and regained all personal property. Consequently the tenant is not pursuing the tenant's application to cancel the 10 Day Notice, order for the landlord to comply with the *Act*, order to suspend or set conditions on the landlord's right to enter and order for the landlord to return the tenants personal property. The tenant still seeks the monetary orders at this hearing and recovery of the filing fees.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant authorized to recover the filing fee for each of the two applications?

Background and Evidence

The parties testified that this tenancy began on November 1, 2015 on a fixed term until May 31, 2016 at which time it was to continue on a month-to-month basis. According to the written tenancy agreement rent in the amount of \$1,000.00 was payable on the first of each month. The tenant testified that he remitted \$500.00 cash for the security deposit at the start of the tenancy whereas the landlord testified the tenant did not submit a security deposit.

Electricity

The tenant testified that upon renting the rental unit, he agreed to be responsible for electricity as he was unaware that multiple buildings shared the same electrical meter. The tenant described his rental unit as a 1400 square foot four bedroom house that sat on acreage along with two barns and four to five sheds. The tenant testified that after receiving the first electrical bill he contacted the landlord and complained about the high consumption. It was at this time that he learned the other buildings shared the same electrical meter. Although the tenant requested the landlord put the electricity in the landlord's name, the landlord refused. The tenant continued to pay rent in the amount of \$1,000.00 each month and pay his electricity bills until April 2016. In April the tenant and landlord entered into a verbal agreement regarding the electrical consumption. The

tenant estimated his usage of electricity was 25% and the remainder 75% was used by the storage sheds and barns. The tenant testified that the landlord agreed to allow the tenant to deduct a portion of the April electricity bill from April's rent. The tenant estimated he paid \$400.00 for April's rent. The tenant now seeks 75% reimbursement for the December and February electric bills for a total amount of \$1,236.33.

The landlord testified that the rental property contains two rental homes, one large shop, one large barn and four small storage sheds. The tenant occupied one rental home that shared an electrical meter with all the buildings excluding the additional rental home. The additional rental home was on its own electrical meter. The landlord testified that the tenant rented the rental unit with the knowledge that the rental unit did not contain a heating source and would be required to provide his own heat. The tenant chose to heat the two storey 2011 square foot home with electric heaters. The tenant utilized what the tenant described as a barn, but the landlord described as a shop. The landlord testified that the tenant was consistently using lights and power for tools in the shop and this contributed to the high electrical consumption. Further the landlord testified that the additional rental home on the property, with its own meter, had its power disconnected sometime in the winter. Upon inspection by an electrician it was discovered that extension cords from the other rental home to the tenants shop were hardwired into the breaker box. The landlord testified that they have incurred an \$850.00 bill from the electrician to repair the damage.

The landlord agreed the parties entered into a verbal agreement regarding the high consumption costs but contended this occurred in December. The landlord testified that rent in the amount of \$1,500.00 was payable on the first of each month, with \$1,000.00 for the rental unit and \$500.00 for shop. Initially, the landlord testified that the tenants January rent of \$1,500.00 was reduced and the tenant paid \$400.00. Later, the landlord testified that despite the \$1,500.00 rental rate, the tenant paid \$1,000.00 rent each month from January until April at which time the tenant paid \$400.00 for April rent. It is the landlord's position that rent was \$1,500.00, the landlord graciously agreed to reduce the rent for the high electrical consumption and the tenant did so by not paying full rent in the amount of \$1,500.00.

In regards to the other rental home and electrical cords, the tenant testified that the landlord refused to provide the name of the electrical company that inspected and contended that there were no cords from the shop to the other rental home, and nothing was hardwired into the breaker box.

Loss of Contract

The tenant testified that at the start of the tenancy he sought the landlords' approval to place a lock on the shop and was granted approval by the landlord. The tenant testified that on May 9, 2016 he received a text from the landlord requesting access to the breaker box in the shop. The tenant did not reply right away as he was busy working. The tenant later received a text indicting the tenants lock had been cut off and replaced with a new one. The landlord informed the tenant a corresponding key was left in the lock for the tenants use. The tenant returned home to find the new lock and no key. The tenant chose not break the lock open due to a text from the landlord threatening such action would result in serious consequences. The tenant contacted the police (file #2016-18595) and reiterated what happened. The police called the landlord. The tenant testified that because he could not access his tools the next morning he could not complete a job contract and was subsequently terminated from the job. The tenant has submitted a letter from the contractor providing reasons for the termination and loss of revenue. In total the tenant is seeking \$1,832.67 in a non-refundable estimation cost and \$6,236.88 for the agreed contract price for a total of \$8,069.53.

The landlord acknowledged granting permission to the tenant to place his own lock on the shop on the condition that a key or code was provided to the landlord. The landlord testified that the tenant gave the code, however it was later discovered that the given code was incorrect. On May 9, 2016 the landlord texted and called the tenant requesting access to the shop to access the breaker box. In the absence of a response from the tenant, and the urgency determined by the attending electrician, the landlord contacted the police who permitted her to cut the tenants lock off. The landlord replaced the lock and left the key in the lock for the tenants use. The landlord acknowledged receiving a call from the police this day telling her the key was not there, however the landlord contended that this does not mean the tenant did not take the key prior to police arrival. The landlord testified that later that evening the landlord observed the tenant entering and exiting the shop.

The tenant disputed accessing the shop on the evening of May 9, 2016. The tenant testified that he lost access to the shop from May 9, 2016 to May 25 at which time the landlord granted him access to the shop with a key. On May 26, 2016 the landlord changed the keyed lock to a coded lock.

Analysis

Electricity

There is no dispute that the electrical costs incurred by the tenant were high and that despite the tenancy agreement, the landlord agreed to compensate the tenant 75% of

the incurred electrical costs. The landlords' argument that the tenant was compensated by way of a rent reduction is not congruent with the parties' alleged agreement of 75% off electrical costs. I find the tenant's payment of \$1,000.00 a month does not constitute a rent reduction for high electrical costs. Rather I find the payment of \$1,000.00 a month constitutes a full month's rent in accordance with the signed tenancy agreement. The landlord has not provided substantiating evidence to indicate rent was increased from \$1,000.00 to \$1,500.00. Based on this, I find rent was \$1,000.00 a month and the tenant was not compensated for excess electricity costs. Therefore I find the tenant is entitled to 75% of December and February \$1,648.44 electricity costs for a total of \$1,236.33 in electricity costs.

Loss of Contract

In respect to a monetary claim for damages or for a monetary loss to be successful an applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Section 29 of the *Act*, establishes that a landlord may enter a rental unit if an emergency exists and the entry is necessary to protect life or property. The parties provided conflicting testimony on the extension cord matter. I prefer the testimony of the landlord over that of the tenant. The landlord was forthcoming and clear in her testimony related to the extension cords whereas the tenant was not credible. He provided no reason to justify the existence of extension cords, other than to testify that the landlord would not give him the name of the electric company. The landlord's testimony has persuaded me on the balance of probabilities that electrical cords were hardwired into the breaker box and required the urgent repair of an electrician. Accordingly, I find the landlord was entitled to enter the shop to rectify this matter.

Under section 31 of the *Act*, a landlord must not change locks or other means that give access to residential property unless the tenant agrees to the change and landlord provides the tenant with a new key. In the absence of this, the tenants remedy would be to break the lock and gain access. I find irrespective of the landlord's "threatening" text message the tenant had a duty to mitigate his loss and gain access to his tools. I find rather than minimize his loss by cutting the lock off the tenant chose to contact the police. I find this action does not negate his duty to mitigate and accordingly find the tenant is not entitled to \$8,069.53 in damages.

As the tenant was successful in one application and not the other, I find that the tenant is entitled to recover the \$100.00 filing fee paid for one application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,336.33 against the landlord.

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 24, 2016

Residential Tenancy Branch