



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, RPP, FF

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the Residential Tenancy Act (the "Act").

The Tenant applied on October 27, 2015 for:

- 1. An Order for the return of the security deposit - Section 38;*
- 2. A Monetary Order for compensation - Section 67;*
- 3. An Order for the return of the Tenant's property - Section 67; and*
- 4. An Order to recover the filing fee for this application - Section 72.*

The Landlord applied on November 6, 2015 for:

- 1. A Monetary Order for damage to the unit - Section 67;*
- 2. A Monetary Order for compensation - Section 67; and*
- 3. An Order to recover the filing fee for this application - Section 72.*

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

It is noted that this hearing was originally adjourned from May 12, 2016 by consent for the exchange of evidence. An Interim Decision was written for this adjournment. At the reconvened date of June 16, 2016 technical difficulties prevented the hearing from being completed and it was rescheduled for July 15, 2016. No Interim Decision was written for this rescheduling.

The Tenant states that he did not receive the Landlord's 24 page evidence packages. The Landlord states that it was sent to the Tenant and that the Tenant has been lying about the receipt of evidence or other documents sent by the Landlord. A review of the 24 page package indicates that some of the materials are irrelevant, some are copies of materials provided by the Tenant, and includes copies of a previous Decision and a tenancy agreement. Given the contents of the package and accepting the Tenant's persuasive evidence I decline to accept the package but will provide the Landlord the opportunity to give oral evidence of the contents where relevant to the issues in dispute.

Issue(s) to be Decided

Is the Tenant entitled to compensation?

Is the Landlord entitled to compensation?

Is the Tenant entitled to return of its property?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy started on November 1, 2014 and ended by mutual agreement on September 30, 2015 with no rent payable for September 2015. Rent of \$1,100.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$550.00 as a security deposit. No move-in condition inspection was conducted. While the Parties completed a move-out inspection no form was filled out.

The Tenant states that it provided it forwarding address to the Landlord on October 1, 2015 by delivering a letter and keys to the mailbox. The Landlord states that the address was not received until the Tenants hearing package was received. The Landlord returned the full security deposit by registered mail on November 6, 2015. The Tenant confirms receiving the cheque. The Tenant claims return of double the security deposit.

The Landlord states that the Tenant has harassed, disturbed, and sexually and mentally abused the Landlord. The Landlord states that whenever the Landlord was at the unit the Tenant would chase her with a camera, would not agree with the Landlord, would look for arguments and would call her names. The Landlord states that on one occasion the Tenant

grabbed her breast. The Landlord states that on one occasion the Landlord had to call the police. The Landlord claims compensation of \$4,000.00.

The Landlord states that the Tenant has left the unit with damages to the fence, sliding glass door, porch floor and kitchen cabinet. The Landlord states that the Tenant took a garden hose and nozzle. The Landlord claims estimated costs for each of these areas of damage. The Landlord states that none of the repairs have been done or items replaced as the Landlord sold the property.

The Tenant states that on the day of the move-out the Landlord showed up before 1:00 pm and would not allow the Tenants to move any more belongings. The Tenant provided a video. The Tenant states that as a result the Tenant was forced to leave behind a portable dishwasher, food, a vacuum and a bag of plastic bags. The Tenant claims \$500.00 for the loss of food items. The Tenant states that he thinks the dishwasher was about 4 years old and had been given to them by a friend. The Tenant provides an estimate for its replacement and claims \$300.00. The Tenant states that the vacuum was 2 years old and costs \$150.00 to replace. The Tenant states that they obtained another vacuum for free. The Tenant states that a bag of garbage bags had been in the unit for the cleaning person but was left when the Landlord kicked them out. The Tenant claims \$20.00. The Tenant provides witness letters that food was left in the fridge and the kitchen had not been emptied on the move-out day.

The Tenant states that during the move-out the Landlord hit the Tenant's cell phone out of his hand causing it to fall and break. The Tenant claims the repair costs of \$150.00, provides an invoice with an estimate of \$140.00 and a receipt for \$156.80. The Landlord states that she attended the place of work identified on the invoice and was told that the Tenant's invoice is not one of their invoices. The Landlord states that an employee gave the Landlord a copy of the business's invoice. This copy is in the evidence package that has been excluded for consideration.

The Landlord states that the Tenants were to be out of the unit by 1:00 p.m., that the Landlord had an order of possession for this time and that that she had the right to take the unit back at that time. The Landlord states that when she arrived at the unit on move-out all the Tenant's belongings were gone and that no cleaning had been done when the Landlord "started to get rid

of him". The Landlord agrees that she stopped the person from cleaning the unit at this time. The Landlord states that all the Tenants belongings were out of the unit except for 3 boxes left in the heating room, that the boxes contained some food, that the fridge was empty and that the Tenant dropped his phone. The Landlord states that the boxes were sent to the Tenant. The Landlord states that she never saw any vacuum and has no clue what the Tenant is talking about.

The Tenant states that the Landlord caused the Tenants a loss of quiet enjoyment from the date that the Landlord bought the property. The Tenant states that in the first encounter with the Landlord she showed up and spoke to the Tenant in a disrespectful manner for over 20 minutes. The Tenant states that the Landlord stopped the Tenants from using their porch for supplies and that the Landlord stopped the Tenants from using the storage shed by taking the keys back. The Tenant states that they had use of the storage and deck from the onset of the tenancy until the Landlord took over. The Tenant states that his wife is an agricultural engineer and used her skills to create a beautiful backyard. The Tenant states that in June 2015 while the Tenant's wife was 7 months pregnant, the Landlord came to the unit and destroyed the back yard, causing the wife to cry for a week.

The Landlord states that she did not have the storage key and that the storage was left open by the Tenants. The Landlord states that she was always checking the Tenant's garbage to see if the keys were in there. The Landlord states that the Tenant has attitudes about women and that at move-out when the Landlord commented on the full storage room the Tenant told the Landlord that this was a "woman's job". The Landlord states that she told the Tenant to clean up the porch as they were storing garbage on it. The Landlord states that the backyard was hers and asks why she would destroy her own backyard.

Analysis

Section 24 of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not make an offer for an inspection at move-in. Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails

to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

*As no move-in condition inspection was conducted I find that the Landlord's right to claim against the security deposit was extinguished at move-in and that the Landlord was required to return the security deposit to the Tenant within 15 days of receipt of the forwarding address. The Tenant's evidence of having provided the Landlord with its forwarding address on October 1, 2015 holds a strong ring of truth. As a result I prefer this evidence over the Landlord's evidence and find on a balance of probabilities that the Landlord did not return the security deposit within the 15 days. As a result I find that the Landlord must pay the Tenant double the security deposit of \$1,100.00. As the Tenant has already received half of this amount the Tenant is now entitled to the remaining **\$550.00**.*

Section 7 of the Act provides that where a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the landlord or tenant must compensate the other for damage or loss that results. This section further provides that where a landlord claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. As the Landlord did not make any repairs or incur and costs for repairs or replacements and considering that the Landlord has not provided any evidence of loss from these items in relation to the sale of the unit I find that the Landlord has not substantiated any loss or costs and I dismiss the claims for repairs and replacements.

If a tenant is disturbing the landlord the remedy for the landlord is to end the tenancy for cause. There are no provisions under the Act that otherwise provide the Landlord with quiet enjoyment or privacy rights. The Act does not provide compensation for criminal acts such as sexual or physical assault. As the Landlord has not shown that the Tenant breached the tenancy agreement or Act and I dismiss the Landlord's claim for compensation of \$4,000.00. As the Landlord's claims are unsuccessful I find that the Landlord is not entitled to recovery of the filing fee and in essence the Landlord's application is dismissed in its entirety.

Section 57(2) of the Act provides that a landlord must not take actual possession of a rental unit that is occupied by an over holding tenant unless the landlord has a writ of possession issued

under the Supreme Court Civil Rules. While the Landlord had an order of possession there is no evidence that the Landlord had a Writ issued by the Supreme Court. Although the Tenant was supposed to have completed its move-out by 1:00 p.m. the Landlord had no actual right to physically stop the Tenant from completing its move. Preferring the Tenant's persuasive evidence and considering the video portrayal of the move-out day I accept that the Landlord did not allow the Tenant to complete his move out of the unit. I also find that some items were not able to be taken due to the Landlord's actions which I find to be a breach of the Act.

*As the Tenant was able to mitigate its loss in relation to the vacuum cleaner and obtained another one for no cost, I find that the Tenant has not substantiated any loss in relation to the cleaner and I dismiss this claim. As the dishwasher was not replaced and was originally loaned to the Tenant, I find that the Tenant has not substantiated the amount claimed and I find that the Tenant has only substantiated a nominal entitlement for the loss of a dishwasher in the amount of **\$100.00**. As the Tenant provided no receipt to support the claim for the plastic bags, I dismiss this claim. Given the video and witness evidence I accept the Tenant's evidence that food was left in the unit. As I consider the amount claimed to reflect be a reasonably expected amount of loss, I find that the Tenant has substantiated its claim to **\$500.00**. Given the video evidence, I find that I prefer the Tenant's evidence that the Landlord caused the Tenant's cell phone to fall and break. I find therefore that the Tenant has substantiated an entitlement to compensation. While the Landlord argues that the invoice is not from the store identified by the Tenant as repairing the cell phone, the invoice itself contains markings that appear valid and given the receipt I accept that the Tenant paid for the phone to be repaired in the amount claimed and I therefore find that the Tenant is entitled to the claimed amount of **\$150.00**.*

*Overall I tend to accept the Tenant's evidence of the Landlord's behavior which I would describe as intrusive and overbearing. While the Tenant's evidence about the Landlord's destruction of the backyard is disconcerting, if true, given the lack of before and after photos I find that the Tenant has not substantiated any extent of damage to the Tenant's environment or loss of enjoyment of the back yard. The Tenant's evidence shows more of a minimal loss of use of various parts of the unit than actual disturbance of the Tenant's enjoyment of the unit. Given my overall preference for the Tenant's evidence, but considering that the Tenant otherwise had full use and enjoyment of the rental unit, I find that the Tenant has only substantiated a nominal entitlement of **\$300.00** calculated as \$100.00 per month for three months.*

*As the Tenant's application has been primarily successful I find that the Tenant is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$1,650.00**.*

Conclusion

The Landlord's application is dismissed.

*I grant the Tenant an order under Section 67 of the Act for **\$1,650.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.*

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: July 15, 2016

Residential Tenancy Branch