



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (the "Regulation") or tenancy agreement pursuant to section 67;
- a monetary order for return of security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The "first hearing" on July 25, 2016 lasted approximately 60 minutes and the "second hearing" on September 28, 2016 lasted approximately 195 minutes, in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application and evidence for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application and evidence. The landlord confirmed he did not provide any documentary evidence for the scheduled hearing.

Preliminary Issue – Timeliness of Application

During the first hearing the landlord raised the issue of timeliness; the landlord contended that the tenant filed outside the limits of the *Act*.

Section 60 of the *Act* establishes that an application for dispute resolution must be made within two years of the date that the tenancy ends. Based on the tenancy end date of July 2, 2012 the tenant had until July 2, 2014 to file his application. As the tenant filed his application on June 30, 2014, I find the tenant filed within the two years permitted by the *Act*.

Preliminary Issue – Amendment of Tenant's Application

Rule 2.8 of the Residential Tenancy Branch Rules of Procedure (the “RTB Rules”), establishes that an applicant with a claim over \$25,000.00 may abandon the portion of the claim that exceeds \$25,000.00.

The tenant applied for a monetary order that exceeded \$25,000.00. The tenant confirmed that he wished to amend the tenant’s application to abandon the part of the claim that exceeded \$25,000.00. The landlord consented to this amendment. Given the landlord’s consent and in accordance with section 64(3)(c) of the *Act*, I amend the tenant’s application from a \$147,898.28 to \$25,000.00 monetary claim.

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*, the *Regulation* or tenancy agreement?

Is the tenant entitled to a monetary order for return of the security deposit?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, banking statements, credit card statements, receipts, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

As per the testimony of the parties, the tenancy began on or around January 27, 2007, on a month-to-month basis. Initially rent in the amount of \$450.00 was payable on the first of each month. As per a legal Notice of Rent Increase, effective September 2011, the rent was increased from the original amount of \$450.00 to \$460.00. In December of 2011 the tenant began paying the landlord \$10.00 for internet services each month. Effective December 2011 to May 2012 the tenant paid the landlord a total of \$470.00 each month.

The tenant remitted a security deposit in the amount of \$225.00 at the start of the tenancy. The landlord maintains possession of the security deposit. The parties agreed that a move-in and a move-out condition report were not completed and the forwarding address was provided by the tenant on the application for dispute resolution form dated June 30, 2014.

On May 22, 2012, the landlord personally served the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"). The 2 Month Notice indicated that the rental unit would be occupied by the landlord or the landlord's close family member. The effective date of the 2 Month Notice was July 31, 2012.

Tenant's Claim

The tenant acknowledged personal receipt of the 2 Month Notice and testified that he did not pay June and July 2012 rent or internet. On July 2, 2012 upon returning home from work, the tenant discovered all his belongings outside in the yard, stuffed into his parked van and thrown on an adjacent vacant lot. As a result, the tenant now seeks \$24,675.00 in compensation, \$225.00 for the return of the security deposit and \$100.00 for the filing fee. The tenant has submitted photographs of items in the yard, some receipts, credit card and banking statements.

Food. The tenant testified that his food was thrown in the yard. In calculating the food costs, the tenant totalled up his last three months of food costs prior to July 2, 2016 and multiplied it by 75%. In total the tenant seeks \$488.81 in compensation for the food that was displaced.

Ceramic music box. The tenant seeks compensation in the amount of \$30.00 for damage sustained to his ceramic music box when the landlord moved it from the rental unit to the yard. The tenant testified he repaired the ceramic music box himself.

Door lock set. The tenant installed his own door lock set at the commencement of his tenancy. The tenant testified that the landlord removed his personal door lock on July 2, 2016 and the tenant had to purchase a new set for his new tenancy. Therefore the tenant seeks to recover the cost of the door lock set in the amount of \$40.60. The tenant provided a receipt.

Coffee table, fish tank and computer desk. The tenant testified that his coffee table, fish tank and computer desk were placed outside and damaged. The tenant indicates that he purchased these items used and seeks to recover the amount he originally paid for them. In total he seeks \$210.00 for these items.

Pink desk and baby stroller. The tenant indicates his desk was thrown outside amongst junk on an adjacent lot and he was unable to retrieve it. The tenant estimated its value at \$70.00. The tenant bought it used and has no receipt for the purchase. The stroller sustained damage in the move from inside to outside and the tenant cannot use

it due to a missing part. The tenant also purchased this used and estimates its value at \$80.00.

Living room display and shelves. The tenant testified that the landlord did not dispose of the living room display or shelves in the yard, instead the landlord left these items in the rental unit. The tenant acknowledged he did not retrieve these items. The tenant seeks compensation for their replacement in the total amount of \$130.00.

Sugar cane extractor. The tenant indicates his sugar cane extractor was regularly stored outside under the deck; however a small part to it was stored inside. The tenant alleges that the small part was moved by the landlord and subsequently lost. The tenant has submitted a written estimate in the amount of \$480.00 to repair the extractor. The tenant indicates he has not repaired this to date.

Fishing reel. The tenant indicates his fishing reel was broken in the move and based on a website, estimates its value at \$39.96.

Vehicle battery. The tenant testified that as a result of things being stuffed into his van, the van door remained slightly open thereby draining the van battery. The following day the tenant managed to jump-start the battery however the battery eventually stopped working and the tenant had to purchase a used replacement battery at the cost of \$39.20. The tenant submitted a receipt.

Stamp and money collection. The tenant testified that he had two albums, one that contained collector's stamps and the other that contained collector's money. He stated that he stored both albums in the same tote. The tenant located the tote, but not the money or stamps. The tenant seeks \$400.00 in compensation for the missing stamp collection and \$1,800.00 in compensation for the missing money collection.

Desktop computer and recovery of data. The landlord placed the tenant's 2005 used desktop computer in the tenant's van. The tenant attests the move damaged the computer and despite attempts to repair it himself, it did not function properly. The tenant had to purchase a new computer in the amount of \$510.05. The tenant paid \$67.20 to have the data recovered from his old computer to his new computer. The tenant seeks to be reimbursed for these costs by the landlord. The tenant has submitted receipts for the computer purchase and data recovery.

Eye glasses. The tenant testified that he found his glasses, however the frame was bent beyond repair and he had to purchase new glasses at the cost of \$270.00. The tenant submitted receipts and seeks to be reimbursed for this cost.

Bunk bed. The tenant testified that he had a futon mattress however the landlord placed it on the dirty floor of his van where it sustained oil stains. The tenant acknowledged he has not replaced the bed to date. The tenant obtained the cost of a bunk bed from a website in the amount of \$455.10 and seeks to recover this amount from the landlord.

Personal hygiene items. The tenant testified that his personal hygiene items were tossed in a bag with the toilet brush. The tenant estimates he lost \$500.00 worth of personal hygiene items and unidentifiable miscellaneous objects. The tenant seeks to recover this amount from the landlord.

Loss of work. The tenant seeks \$2,000.00 for loss of work. He testified that he typically worked 25 to 30 hours a week earning an hourly wage of \$11.00. The tenant testified that as a result of having to urgently move and transfer his belongings he missed two scheduled eight hour shifts and called in sick for two two hour shifts and one eight hour shift. The eight hour shifts were scheduled for July 3 and 4, 2012 whereas the sick shifts were scheduled for July 11, 13, and 16, 2012.

Accommodation. The tenant seeks compensation for accommodation paid between July 3, 2012 and the time he entered into a new tenancy on November 15, 2012. In total the tenant seeks \$3,125.00 in compensation. The tenant has provided receipts and copies of his internet search in finding a new rental.

Insurance, air care, repair and fuel. The tenant testified that he typically did not use his van; he used transit and his bike. The van was in working condition but he did not have it insured. The tenant testified that as a result of his eviction, he had no alternative but to insure the van on a temporary basis for 3 months to transport his goods and rearrange his life. Following the three months, air care was required and subsequent repairs were required to pass air care. The tenant seeks to recover theses cost in addition to the fuel and permanent insurance. In total the tenant seeks \$1,811.62 in compensation for vehicle costs.

Storage. Initially the tenant moved his goods to a friend's to store but eventually he moved his belongings into storage. The tenant seeks compensation for storage costs from July 31, 2012 to November 29, 2012 in the total amount of \$573.02.

Grocery, eat out. The tenant seeks 50% of his food costs from July 2, 2012 to November 15, 2012. It is the tenant's position that his food cost increased as a result of the eviction because he could not cook in the temporary accommodation he found

himself in. The tenant has submitted copies of his bank and credit card statements to show costs associated with eating out and groceries. In total the tenant seeks \$758.72 in groceries and restaurant costs.

Failure of duty as landlord. The tenant listed a number of deficiencies within the rental unit that he feels entitles him to a total of \$2,500.00.

Loss of joy of life. The tenant testified that due to the landlord's action the tenant could not enjoy life. He could not fish, make food or see his estranged daughter. The tenant was in the middle of negotiating a visit with his daughter when he was evicted from his rental unit. The tenant alleges this life event was disrupted by the eviction. In total the tenant seeks \$4,295.72 for this loss.

Stress, damage to health, sickness. The tenant testified that every day he spent time looking for lost items. Initially he could not locate his essentials; he had to borrow hygiene items and clothes from a friend. He had to endure the stress of getting temporary insurance on his vehicle to move his belongings, to find a place to store his belongings, and to find a place to reside. In total the tenant seeks \$1,500.00 for this loss.

Disrespect dignity; deprive basic rights, loss of personal objects. The tenant lost sentimental objects such as his money collection inherited from his uncle and stamp collection from his parents. The tenant seeks \$2,500.00 for this loss.

Penalties: The tenant testified that in 2011 the landlord tried to raise the rent in contravention of the *Act*, at which time the tenant disagreed to pay so the landlord removed access to laundry facilities. The tenant indicated that the landlord has done this to other tenants and wants him penalized.

Landlord Reply

The landlord testified that he served the 2 Month Notice in order to allow his daughter to live in the rental unit. The landlord testified that his daughter did not move into the rental unit after all.

The landlord acknowledged that he did not have an order of possession, but took the tenants lock set off the door and moved the tenant's belongings out of the rental unit on July 2, 2012 anyhow. The landlord testified that he paid three other men to help him move the tenant's belongings. It is the landlord's position that they did not take, destroy or damage anything. The landlord admits they did not itemize things, but he testified

that they put items in totes, boxes and garbage bags in the yard, on the covered deck, under the deck and in the tenant's van. The landlord denied moving items to a vacant adjacent lot. The landlord denies the tenant is entitled to any compensation.

Witness, Richard Finley

The witness testified that he was one of the hired men to move the tenant's belongings on July 2, 2012. He testified that they did not damage or break anything in the move, he had no reason to. The witness could not recall what he moved or where he moved the items to.

Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the 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.

Although a formal Notice to End Tenancy was issued by the landlord, the landlord did not wait for this notice to take effect; instead the landlord unlawfully evicted the tenant on July 2, 2012. On this basis, I find the landlord has contravened the *Act* and as a result the tenant suffered some loss.

Food. There is no dispute that food was moved from the rental unit. The submitted photographs show that food was placed outside, some in totes and others placed freely on the covered deck. The pictures depict perishable food items amongst non-perishables. On this basis I find some of the displaced food was salvageable. In the absence of a detailed list of each food item and the cost associated with it, an exact award cannot be granted therefore I grant the tenant a nominal award of \$150.00 for food.

Ceramic music box. The tenant testified that he repaired the ceramic music box himself; therefore I find the tenant did not incur a cost and is not entitled to compensation for his music box. I dismiss this portion of the tenant's claim.

Door lock set. Based on the undisputed testimony of the tenant I find the landlord took the tenant's door lock set and did not return it. Therefore I find the tenant is entitled to \$40.60 to cover the cost of the new set he purchased.

Coffee table, fish tank, computer desk, pine desk, baby stroller, sugar cane extractor and fishing reel. Although the tenant has provided some evidence in the form of photographs that these items were relocated outside, the tenant has provided insufficient evidence to show that these items were damaged as a result of the move. For these reasons, I dismiss this portion of the tenant's claim.

Living room display and shelves. I find the tenant failed to mitigate his loss by retrieving or attempting to retrieve these items from the rental unit, therefore I dismiss this portion of the tenant's claim.

Vehicle battery. As per the submitted receipt the tenant did not replace his vehicle battery until October 6, 2012, three months after the tenant was unlawfully evicted. The new battery was not required to immediately move his belongings from the residential property. For this reason, I dismiss this portion of the tenant's claim.

Stamp and money collection. The tenant has provided insufficient evidence to establish the landlord took or lost his stamp or money collection. Further, the tenant has provided insufficient evidence to establish the true value of any such sets. For these reasons I dismiss this portion of the tenant's claim.

Desktop computer and recovery of data. The tenant has provided insufficient evidence to establish the computer was damaged as a result of the move. Based on the receipts submitted by the tenant the new computer was not purchased until June 8, 2014, and the data was not recovered until June 6, 2015. As these dates exceed the unlawful eviction by two and three years, I dismiss this portion of the tenant's claim.

Eye glasses. The tenant has provided insufficient evidence to establish his eye glasses were damaged by the landlord when moving items from the rental unit. I dismiss this portion of the tenant's claim.

Bunk bed. The tenant has not provided the value of his bed that he alleges was damaged and he acknowledges he has not replaced it to date. For these reasons, I dismiss this portion of the tenant's claim.

Personal hygiene items. The photographs depict a toothbrush amongst a toilet brush and other miscellaneous objects. Although I find the tenant has provided insufficient

evidence to establish a \$500.00 loss, I find it probable that the toothbrush was contaminated by the toilet brush and would not be used by the tenant. Therefore I grant the tenant a nominal award in the amount of \$3.00 for the purchase of a new toothbrush.

Loss of work. I find it probable that the tenant had to miss some work to tend to the urgent matter of moving his possessions from the residential property. However, I find that the tenant has not established his entitlement of \$2,000.00 for missed work. Instead, I find based on the tenant's testimony he is entitled to \$308.00 (28 hours x \$11.00) for those shifts he testified to having missed.

Accommodation. As the tenant was unlawfully evicted he clearly suffered a temporary loss in accommodation. The tenant has provided proof in the form of receipts for temporary housing from July 5, 2012 to September 9, 2012 in the total amount of \$1,730.00. In an effort to establish his search for new housing, the tenant has submitted copies of rental advertisements. The latest advertisements, dated June 2012 are insufficient to establish the tenant took reasonable steps to reduce his loss.

It should be noted that the tenant had received a 2 Month Notice with an effective date of July 31, 2012. The tenant had 15 days to file with the Residential Tenancy Branch to dispute the 2 Month Notice. The tenant did not do so; thereby accepting the tenancy was set to end July 31, 2012 and he would have to vacate by that time.

Based on the above, I find the tenant is entitled to recover the documented costs of accommodation spent for the month of July in the amount of \$594.21 less rent he normally would have paid in the amount of \$470.00 for a total award of \$124.21.

Insurance, air care, repair and fuel. I find the tenant's vehicle costs are not a result of the unlawful eviction. Although the tenant had to remove his possessions he was not obligated to insure, air care and repair his vehicle. He had other less expensive means available to him, such as renting a vehicle to remove his possessions from the residential property. For these reasons I dismiss this portion of the tenant's claim.

Storage. I find it reasonable that the tenant did not anticipate having to store his goods for the month of July and the cost was incurred as a result of the eviction. Based on the above finding that the tenant failed to establish he had taken reasonable steps to secure accommodation for the months of August, September and October, I award the tenant storage costs for one month in the amount of \$123.14.

Grocery, eat out. The tenant has provided evidence in the form of banking statements and credit card statements to illustrate escalated foods costs. Based on the documentary evidence, during the three months prior to the eviction, the tenant spent an average of \$188.82 a month on groceries and \$15.14 on restaurants. Following the eviction, specifically in the month of July the tenant spent \$145.54 on groceries and \$28.97 on restaurants. Despite the tenant's position that his food related costs escalated as a result of the eviction, the records show July's grocery bill was reduced with restaurants increasing only slightly. Based on the above, I find the tenant is entitled to recover excess restaurant costs in the amount of \$13.83 for the month of July.

Failure of duty as landlord. I find that the tenant did not attempt to mitigate any loss during his tenancy by filing an application with the Residential Tenancy Branch to address any deficiencies within the rental unit. Therefore I dismiss this portion of the tenant's claim.

Loss of joy of life, stress, damage to health, sickness, disrespect dignity, deprive basic rights, loss of personal objects. Section 44 establishes the ways in which a tenancy can legally end. Based on the parties testimony I am satisfied that the tenant was evicted contrary to section 44 of the *Act*. For this reason, I grant the tenant a nominal award in the amount of \$470.00 in recognition of the landlord's contravention of the *Act*.

Penalties: At the hearing, the tenant requested that an administrative penalty, pursuant to section 94.1 of the *Act*, be levied against the landlord. I do not have the authority to administer administrative penalties against the landlord, only the Director of the Residential Tenancy Branch does. Therefore, the tenant must apply for such a penalty through the required procedure as outlined in the *Act*.

Security Deposit. Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit.

A forwarding address only provided by a tenant on the application of dispute resolution form does not meet the requirement of separate written notice under the *Act*.

Under section 39 of the *Act*, if a tenant does not provide a forwarding address in writing to the landlord within one year after the tenancy ends, the landlord may retain the

security deposit and the right of the tenant to the return of the security deposit is extinguished.

On this basis, I find the tenant did not provide his forwarding address in writing and as the year has elapsed he has extinguished his right to the return of it. I dismiss this portion of the tenant's claim.

Filing fee. As the tenant was partially successful in this application, I find the tenant is entitled to recover \$50.00 of the \$100.00 filing fee paid for the application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$1,282.78**.

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: October 28, 2016

Residential Tenancy Branch