Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, OPT, FF, RPP, O

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for an Order of Possession, for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, for an Order requiring the Landlord to return personal property, for "other", and to recover the fee for filing this Application for Dispute Resolution. At the outset of the hearing the Tenant stated he did not intend to apply for an Order of Possession and I will, therefore, not consider that matter at these proceedings.

The Tenant stated that on, or about, September 30, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant submitted with the Application were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of the documents/evidence and the evidence was accepted as evidence for these proceedings.

On November 10, 2016 the Landlord submitted 31 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was sent to the Tenant at the service address, via regular mail, on October 21, 2016. The Tenant stated that this evidence was not received.

The parties were advised that I am unable to accept the Landlord's evidence as there is no evidence to corroborate the Landlord's testimony that it was sent and there is no evidence to refute the Tenant's testimony that it was not received. The parties were advised that the hearing will proceed in the absence of the Landlord's evidence and that if, at any point during the hearing, the Landlord feels it is necessary for me to physically view evidence that she has submitted I will consider a request for an adjournment.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?
Is the Tenant entitled to a monetary Order?
Is there a need to issue an Order requiring the Landlord to return personal property?

Background and Evidence:

The Advocate for the Tenant stated that the tenancy began on June 24, 2016. The Tenant stated that he is not certain when the tenancy began, although he does not dispute that it began on June 24, 2016.

At this point the Advocate for the Tenant asked for an adjournment for the purposes of having the tenancy agreement submitted in evidence, which he stated will confirm that the tenancy began on June 24, 2016. As the parties agree they entered into a tenancy agreement I find that the exact start date of the tenancy is not particularly relevant to the issues in dispute at these proceedings. I denied this request for an adjournment as the start date of the tenancy is not particularly relevant and I concluded it was not necessary for me to view the tenancy agreement at that point in the hearing.

The Landlord and the Tenant agree that:

- the parties entered into a written tenancy agreement;
- the Tenant and a co-tenant with the initials “D.C.” are named on the tenancy agreement;
- the Tenant and his co-tenant agreed to pay monthly rent of $900.00;
- rent was due by the first day of each month;
- a security deposit of $450.00 was paid for the tenancy;
- the Landlord has not returned any portion of the security deposit; and
- the Landlord has not filed an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that on September 15, 2016 he posted a letter, dated September 15, 2016, at the Landlord’s residence. In this letter, which was submitted in evidence by the Tenant, the Tenant provided a return address. The Advocate stated that the Landlord did not receive this letter until it was served as evidence for these proceedings.

The Tenant submitted a photograph of an envelope taped to a glass which is labelled "15 Day Notice". The Tenant stated that this is a photograph of the letter he posted at the Landlord's residence on September 15, 2016.

The Tenant submitted a screen shot of an undated text message in which the Tenant declared that "within the next two days" a "15 day notice to pay me for my stolen property, return my damage deposit" will be served.

The Tenant stated that he also provided the Landlord with his forwarding address when he served the Landlord with the Application for Dispute Resolution.

The Advocate stated that on August 31, 2016 the Landlord posted a One Month Notice to End Tenancy for Cause on the door of the rental unit, which declared that the Tenant must vacate the rental unit by September 30, 2016. The Tenant stated that he located the One Month Notice to End Tenancy on August 31, 2016 and that he did not file an Application for Dispute Resolution seeking to cancel this Notice to End Tenancy.

The Advocate stated that on September 01, 2016 the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit, which declared that the Tenant must vacate the rental unit by September 11, 2016. The Tenant stated that he located the Ten Day Notice to End Tenancy on September 08, 2016 and that he did not file an Application for Dispute Resolution seeking to cancel this Notice to End Tenancy.

The Tenant submitted a letter from the Advocate, dated August 31, 2016. In this letter the Advocate declares that the Landlord has received $200.00; that the Landlord expects to receive another $225.00 by September 15, 2016; and that if the Landlord receives another $425.00 by September 01, 2016 the Landlord will "forgo" the One Month Notice to End Tenancy.

The Tenant contends that the letter of August 31, 2016 shows some rent has been paid for September of 2015 and that the Ten Day Notice to End Tenancy for Unpaid Rent, dated September 01, 2016, is therefore inaccurate because it declares that $850.00 in rent is overdue for September of 2016. He stated that he did not pay any rent for September of 2016.

The Landlord and the Tenant agree that the Tenant did not serve the Landlord with notice to end the tenancy.

The Advocate stated that on August 31, 2016 DC provided the Landlord with written notice of his intent to end the tenancy which is dated August 31, 2016. This letter, which appears to have been signed by DC, was submitted in evidence by the Landlord. The letter was read aloud by the Advocate during the hearing. In the letter DC gives notice to vacate the rental unit "immediately".

The Advocate stated that on September 08, 2016 the Landlord received a letter from the co-tenant, whom I will refer to as "DC". This letter, which appears to have been

signed by DC, was submitted in evidence by the Landlord. The letter was read aloud by the Advocate during the hearing. This letter declares, in part, that the Landlord may keep the security deposit of $425.00 for rent for September of 2016.

The Tenant was advised that I considered the letters of September 08, 2016 and August 31, 2016 to be highly relevant and that I was inclined to adjourn the hearing for the purpose of having the Landlord re-serve these letters to the Tenant. The Tenant stated that he did not wish to have the matter adjourned and that he was agreeable to have the letters accepted as evidence without the need to physically view the letters. As the Tenant consented to have the letters considered as evidence without viewing the letters, they were accepted as evidence for these proceedings.

The Tenant stated that:

- he was not aware that DC provided the Landlord with written notice to end the tenancy;
- when he returned home on September 08, 2016 he found the locks to the rental unit had been changed;
- prior to leaving the rental unit he had barricaded the door to his bedroom with the intention of crawling through the bedroom window to access the rental unit;
- when he returned to the rental unit he found that the window in his bedroom had been locked; and
- the police provided him with entry to the unit on September 08, 2016, at which time he determined that all of the property had been removed from the unit.

The Advocate stated that:

- DC came to the removed the property from the rental unit on September 08, 2016;
- he observed DC move some of the property listed on the Tenant's letter of September 15, 2016;
- the only property left at the rental unit after DC finished moving on September 08, 2016 was a table belonging to DC, which DC told the Landlord he did not want;
- he did not ascertain who owned the property being moved by DC as he understood some of the property was being moved on behalf of
- in the letter dated September 08, 2016 DC declared that he and the Tenant were "abandoning" the rental unit;
- in the letter dated September 08, 2016 DC declared that he and the Tenant were forfeiting "any other items belonging" to him or the Tenant;
- in the letter dated September 08, 2016 DC declared that he was moving the Tenant's belongings to the Tenant's grandmother's home;
- on September 09, 2016 the police attended the residence and the Tenant told them he had lost his key to the unit;
- on September 09, 2016 the police showed the Tenant the vacant rental unit; and

- the Landlord did not change the locks to the rental unit on, or before, September 09, 2016.

The Tenant is seeking compensation of $4,500.00, in part, due to an “illegal eviction”.

The Tenant is seeking compensation of $4,500.00, in part, because some of his property is missing. He stated that some of his property was moved to his grandmother’s home by DC but he is missing several items, which he listed on his letter of September 15, 2016. He submitted no evidence to show that any of the missing items were moved by the Landlord.

In support of his claim for missing property the Tenant stated that DC’s brother told him that none of his property was moved from the Tenant’s bedroom by DC.

In support of his claim for missing property the Tenant submitted a video recording that was taken on September 09, 2016. He stated that this video shows his personal property that was delivered to his grandmother’s residence by DC.

In support of his claim for missing property the Tenant submitted a video recording that was taken on August 26, 2016. He stated that this video shows the personal property that was in his bedroom on that date.

At the conclusion of the hearing the Advocate stated that the Landlord does not need an adjournment for the purposes of re-serving evidence to the Tenant, providing the letters dated September 08, 2016 and August 31, 2016 were being considered. The Advocate was advised that these letters were being accepted as evidence for the proceedings and would be considered.

Analysis:

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act.*

On the basis of the undisputed evidence I find that the Landlord posted a Ten Day Notice to End the Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act,* on the door of the rental unit on September 01, 2016. As the Tenant did not dispute this Notice to End Tenancy I find that it would have served to end the tenancy on, or after, September 11, 2016, pursuant to section 46(5) of the *Act*.

In adjudicating this matter I have placed no weight on the Tenant’s submission that the amount the Landlord declares is overdue on the Ten Day Notice to End Tenancy for Unpaid Rent is inaccurate. I find that an error of this nature on the Notice does not negate the conclusive presumption established by section 46(5) of the *Act*, and that this Notice would have served to end the tenancy on, or after, September 11, 2016, in spite of that error.

On the basis of the undisputed evidence I find that the Landlord posted a One Month Notice to End the Tenancy for Cause, served pursuant to section 47 of the *Act,* on the door of the rental unit on August 31, 2016. As the Tenant did not dispute this Notice to End Tenancy I find that it would have served to end the tenancy on, or after, September 30, 2016, pursuant to section 47(5) of the *Act*.

On the basis of the testimony of the Advocate and the letter dated August 31, 2016, I find that DC gave the Landlord written notice to end the tenancy. I find that this notice did not comply with section 45 of the *Act* because it did not end the tenancy on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent was due. When the end date of this Notice to End Tenancy is corrected, pursuant to section 53 of the *Act*, I find that this written notice to end the tenancy would have served to end the tenancy on September 30, 2016.

I find that this tenancy ended before any of the aforementioned notices to end tenancy took effect and I therefore find that this tenancy did not end pursuant to section 44(1)(a) of the *Act.*

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act.*

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act.*

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act.*

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act.*

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this rental unit was abandoned on September 08, 2016 and that the tenancy ended on that date pursuant to section 44(1)(d) of the *Act.*

In determining that this rental unit was abandoned on September 08, 2016 I was heavily influenced by the letter from DC, dated September 08, 2016, in which he declared that he and the Tenant were “abandoning” the rental unit. As the Tenant and DC jointly entered into this tenancy agreement I find that they were co-tenants who were jointly responsible for meeting the terms of the tenancy. When one co-tenant gives proper notice to end a tenancy or advises the landlord that the rental unit is being abandoned

the tenant is acting on behalf of both tenants, even if the co-tenant does not agree to those actions.

In determining that this rental unit was abandoned on September 08, 2016 I was further influenced by the letter from DC, dated September 08, 2016, in which he declared that he was moving the Tenant's property out of the rental unit.

In determining that this rental unit was abandoned on September 08, 2016 I was heavily influenced by the undisputed evidence that all of the property was removed from the rental unit by DC on September 08, 2016, with the exception of one table which DC said he did not want.

As I have concluded that this tenancy ended pursuant to section 44(1)(d) of the *Act*, I find that the Tenant's claim for compensation as a result of an "illegal eviction" is unfounded. I therefore dismiss his claim for compensation related to how this tenancy ended.

Section 26(3) of the *Act* stipulates that whether or not a tenant pays rent in accordance with the tenancy agreement a landlord must not seize any personal property of the tenant or prevent or interfere with the tenant's access to the tenant's personal property. I find that there is no evidence that the Landlord took possession of any of the Tenant's personal properties. Rather, the evidence shows the Tenant's property was moved from the rental unit by DC. Even if DC mishandled some of the Tenant's property during the move or he kept property belonging to the Tenant, I cannot conclude that the Landlord is responsible for replacing the property. I therefore dismiss the Tenant's claim for compensation for personal property.

In adjudicating this matter I have placed no weight on the Tenant's testimony that DC's brother told him that none of his property was moved from the Tenant's bedroom by DC. I find this is hearsay evidence, which is fraught with frailties, and that it is inconsistent with the Tenant's testimony that DC moved some of his property to his grandmother's home.

In adjudicating this matter I have placed little weight on the video recording that was taken on September 09, 2016, as it has limited evidentiary value. I find that this recording confirms that some property was moved to the Tenant's grandmother's residence but it does not establish what happened to the property the Tenant alleges was missing and it does not establish that any of the missing property was moved by the Landlord.

In adjudicating this matter I have placed little weight on the video recording that was taken on August 26, 2016, as it is of limited evidentiary value. I find that this recording does not establish what happened to the property the Tenant alleges was missing and it does not establish that any of the missing property was moved by the Landlord.

Section 38(4)(a) of the *Act* authorizes a landlord to keep an amount from a security

deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. On the basis of the letter dated September 08, 2016 I find that DM gave the Landlord written permission to apply $425.00 of the security deposit to rent due for September.

The undisputed testimony is that a security deposit of $450.00 was paid. As the Landlord only had permission to apply $425.00 of the deposit to overdue rent, pursuant to section 38(4)(a) of the *Act*, I find that the Landlord still retains a security deposit of $25.00.

Section 38(1) of the stipulates 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 either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

I find that the Tenant submitted insufficient evidence to establish that the Landlord received a forwarding address prior to the Tenant filing this Application for Dispute Resolution. On the basis of the testimony of the Tenant and the photograph of an envelope labelled “15 Day Notice” which was taped to glass, I accept the Tenant’s testimony that he posted his forwarding address at the Landlord’s residence on September 15, 2016.

I find there is insufficient evidence, however, to refute the Landlord’s submission that the letter was not received. I find it entirely possible that the letter was posted and that it was removed by a third party, lost to the elements, or not received by the Landlord for another reason.

On the basis of the undisputed evidence I accept that the Landlord received the Tenant’s forwarding address when she received this Application for Dispute Resolution.

I find that the legislation contemplates that the forwarding address be provided, in writing, prior to a tenant filing an Application for Dispute Resolution. I find it would be unfair to landlords to conclude differently, as they may believe that it is too late to make a claim against the deposit because the matter is already scheduled to be adjudicated. I therefore find that the Tenant’s application for recover the security deposit was premature, as it was made before the Landlord <u>received</u> a forwarding address in writing. I therefore dismiss the Tenant’s application to recover the security deposit, with leave to reapply.

The Tenant has the right to file another Application for Dispute Resolution seeking to recover the <u>remaining $25.00 of the security deposit</u> once the Landlord has provided a forwarding address in writing in a manner that complies with section 88 of the <u>*Act.*</u> Once the Landlord receives the Tenant’s forwarding address in writing the Landlord must file an Application for Dispute Resolution claiming against the remaining $25.00 or she must return the remaining $25.00 to the Tenant or DC within 15 days of receiving the forwarding address.

I find that the Tenant has failed to establish the merit of his Application for Dispute Resolution and I dismiss his application to recover the fee for filing this Application.

Conclusion:

The Tenant has failed to establish a monetary claim and his Application for Dispute Resolution is dismissed.

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: November 22, 2016

Residential Tenancy Branch