



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

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

The landlord and both tenants attended the hearing and each gave affirmed testimony. The landlord was accompanied by the landlord's spouse, who did not testify or take part in the proceedings. The tenants were accompanied by an Advocate, who provided support to the tenants but did not testify. The parties were given the opportunity to question each other respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised, and the parties agree that all evidence has been exchanged.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for return of the security deposit?
- Have the tenants 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 return of a portion of rent paid and moving expenses?

Background and Evidence

The first tenant (PH) testified that this month-to-month tenancy began on August 15, 2016 and ended in mid-September or so. Rent in the amount of \$500.00 per month was payable in advance on the 31st day of each month, and there are no rental arrears.

On August 11, 2016 the landlord collected a security deposit from the tenants in the amount of \$250.00 which is still held in trust by the landlord, and no pet damage deposit was paid. The rental unit is a cabin, and the landlord resides on the property in a separate residence. A copy of the tenancy agreement has been provided.

The tenant further testified that the landlord posted a 1 Month Notice to End Tenancy for Cause to the door of the rental unit but doesn't recall when. A copy has been provided and it is dated September 8, 2016 and contains an effective date of vacancy of September 22, 2016 and has been altered as follows: 14 DAY ~~1 MONTH~~ NOTICE TO END TENANCY FOR CAUSE. The tenants have also provided a copy of a 1 MONTH NOTICE TO END TENANCY FOR CAUSE dated September 14, 2016 effective October 15, 2016.

Police had been to the rental unit, called by both parties, during which the landlord made an agreement to police that if the tenants moved out, the landlord would return a proportionate amount of rent for the month and the security deposit, but has not done so and the tenants have moved out.

The tenant also testified that the landlord has entered the rental unit when the tenants were not home on more than one occasion, as evidenced by the door being unlocked and lights on when the tenants returned. Also, an i-Phone has gone missing and a lamp was broken. The tenant also found dirty laundry from a laundry basket, and other clothing on floor. The tenant asked the landlord who threatened to move the tenants out.

The tenant also testified that the reasons for ending the tenancy as quoted on the notices to end the tenancy given by the landlord were not justified. The landlord's husband threatened to cut off the tenant's head with a chain saw. The tenant was afraid and the landlord asked the tenant's girlfriend (VC) to lie to police and made other disturbing suggestions. The tenants called police on 3 occasions. The landlord told the police that the tenant had assaulted the landlord's husband by throwing food at him, but the tenant only threw an apple on the ground.

The landlord has slandered the tenants on Facebook, a social media web-site, as a witch hunt, accusing the tenants of stealing furniture and terrorizing the landlord. It was done to prevent the tenants from finding another rental unit, however the tenants were able to re-rent.

The landlord never fixed any holes in walls or water damage from previous tenancies and never fixed the door. It wouldn't lock and would open just by pushing on it. The

landlord has threatened assault several times and threatened to have 5 people move the tenants out.

The tenants have provided the landlord with a forwarding address on the Tenant's Application for Dispute Resolution, but not prior to that. The landlord has not served the tenants with an application for dispute resolution claiming against the security deposit.

The second tenant (VC) testified that the landlords have caused nothing but problems during the short tenancy. The landlord threatened to "bounce" the tenants off the unit with 5 guys, threatened assault with a chain saw, and said they would help out the tenant (VC) but not the other tenant (PH). The landlord told the tenant to lie to police, and also had the tenant (VC) arrested alleging assault. However, the landlord came at the tenant with a stick toward the door of the rental unit and put a big hole in the door. She also cracked the bathroom window. The tenant called the police.

The landlord blamed the tenants for stuff they didn't do. The tenants threw apples because the landlord was outside blaring music, but the apples were not thrown at the landlord, only to the ground.

The tenants paid 1 and a half month's rent, but the tenants had to hire someone to move them out. The tenants claim return of the \$250.00 security deposit; \$250.00 return of a portion of the last month's rent, and moving expenses.

The landlord testified that the tenants have not provided a forwarding address in writing except on the Tenant's Application for Dispute Resolution.

The landlord served the tenants with the "14 Day Notice to End Tenancy for Cause," but subsequently gave a 1 Month Notice to End Tenancy for Cause and a copy has been provided.

Police were at the rental property on more than one occasion and on September 13, 2016, the landlord told them that the security deposit and a proportionate amount of rent would be returned to the tenants if they vacated that day. However the tenants didn't vacate.

On September 15, 2016 the tenants were arrested. The landlord was threatened by the tenants with gang violence, and the landlord was assaulted. Police arrested the tenants, and they were released with conditions that the tenants do not attend on the property. A copy of an Undertaking Given to a Justice/Judge has been provided showing that the tenant (PH) has been charged with the offence of assault with a weapon, allegedly occurring on September 15, 2016, and must abide by conditions to attend Court and to have no communication with the landlord, to abstain from going to

the rental property, or within 1 km of the rental property. The document is dated September 19, 2016. Another Undertaking Given to a Justice/Judge has been provided showing that the tenant (VC) is charged with 4 offences allegedly occurring on September 15, 2016, however only 2 charges appear on the document, which are 2 counts of assault with a weapon. The conditions that the tenant is to abide by are the same as those for tenant (PH).

The landlord was not charged with any offences. The tenants have not returned to the rental unit.

Analysis

Firstly, with respect to the security deposit, the *Residential Tenancy Act* states that a landlord must either return a security deposit in full to a tenant or make an application for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either, the landlord must repay the tenant double the amount. In this case, the landlord has done neither, however did not receive a forwarding address in writing until served with the Tenant's Application for Dispute Resolution. The parties agree that the landlord now has the forwarding address in writing, and I order the landlord to return the security deposit to the tenants or make an application for dispute resolution claiming against it within 15 days from the date of this hearing and written Decision. If the landlord fails to comply, the tenants will be at liberty to re-apply for double the amount, and the tenant's application before me for a monetary order for return of the security deposit is hereby dismissed with leave to reapply.

The tenants have also applied for damages for moving expenses and a proportionate amount of rent paid for September, 2016. The *Residential Tenancy Act* does not permit a claim for damages for slander or to punish the landlord. In order to be successful, the tenants must establish that damages or a loss has been suffered, that damages or a loss has been suffered because of the landlord's failure to comply with the *Act* or the tenancy agreement, what those damages are worth, and what the tenants did to mitigate any loss suffered.

I have reviewed the evidentiary material, specifically the Undertaking Given to a Justice/Judge for each of the tenants. I accept the testimony of the landlord that the tenants were charged with offences and the landlord was not, nor was the landlord's husband.

I also find that the tenants did nothing to mitigate, or reduce any damages or loss suffered. Both tenants admitted to throwing apples, and whether they were thrown at

the landlord or the landlord's spouse is not a consideration. I find that the tenants were antagonistic, and have not established mitigation or that any damages or loss suffered were the result of the landlord's failure to comply with the *Act* or the tenancy agreement. The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

Conclusion

For the reasons set out above, the tenants' application for a monetary order for return of the security deposit is hereby dismissed with leave to reapply.

The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

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: December 13, 2016

Residential Tenancy Branch