



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, O

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order for the cost of emergency repairs
- b. A monetary order in the sum of \$3630.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Landlord by mailing, by expressed post on October 6, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to the cost of emergency repairs?
- b. Whether the tenant is entitled to a monetary order and if so how much?

Background and Evidence

The representative of the respondent is the landlord's son. The landlord is in poor health and is in hospital. The nature of the relationship is in dispute. The representative of the landlord testified that the applicant moved into the rental property through a friend who also lived there. The landlord had a room in the basement but used the entire property. The representative of the landlord stated that the jurisdictional argument as to whether the Residential Tenancy Act applies was made at a previous

hearing and the arbitrator determined that a residential tenancy relationship existed. That hearing resulted in a settlement between the parties of a number of issues.

The tenancy began on February 9, 2015. There is a written tenancy agreement provided that the tenant(s) would pay rent of \$375 per month payable in advance on the first day of each month. The tenant did not pay a security deposit.

In the spring of 2016 the landlord was hospitalized. The representative of the landlord gave notice to all occupants of the house was going to be sold. In July the landlord was hospitalized a further time and the representative of the landlord gave notice that the landlord would not be returning and that they should find alternative accommodation. The remaining occupants with the exception of the applicant vacated the rental unit.

The tenant gave oral testimony and also referred to a 4 page document entitled Events that Occurred along with an additional one page document. Briefly, the relevant evidence is as follows:

- On July 7 the landlord was hospitalized.
- On July 15 the representative of the landlord moved in C who threatened the applicant on a number of occasions.
- On July 27 the tenant received a notice from the representative of the landlord stating that the landlord had granted EU, a realtor permission to access to the home. The tenant stated the landlord had no knowledge of this.
- On August 2 all of the furniture from the home was loaded into a large trash container. The workers threw out the tenant's stained glass which her valued at \$879.
- On August 3 the applicant was told by the representative of the landlord that the kitchen would be closed on August 15.
- On August 8 the tenant served the representative of the landlord with arbitration hearing papers that were set for September 26, 2016.
- On August 10 the representative of the landlord forced himself into the tenant's bedroom without his permission. The police were called.
- On August 11 the representative of the landlord shut off the gas.
- On August 15 the representative of the landlord removed the microwave ovens and turned off the hydro.
- On August 19 the tenant visited the landlord and the hydro was turned back on.
- On September 13 the landlord's agent removed the front door and locked the garage. The police were called.

- On September 14, 2014 I returned home to discover the landlord's realtor had disposed of many of his belongings.
- On September 26 an arbitration hearing was held in which the parties settled many outstanding issues including the agreement to end the tenancy on November 30, 2016 and the agreement that the landlord will replace/reinstate the fridge, stove, washer, dryer, hot water and heat by September 30.
- On September 27, 2016 the hydro was put back into the name of the landlord.

The agent for the landlord gave the following evidence.

- The tenant moved into the rental unit through a co-tenant in February.
- His father lived in entire house. He did not have a separate suite in the basement.
- He was under the belief that the applicant was not a tenant and did not have rights under the Residential Tenancy Act.
- He has not paid rent since August 15 and the tenant owes rent for August, September, October and November. The tenant was entitled to one of the months rent-free under the settlement agreement..
- He denied that he and the realtor disposed of stained glass or tools
- The bedding was returned.
- The tenant has lived in the rental unit for 3 ½ months rent free.
- He replaced the fridge with a smaller Danby fridge from his father's unit that was properly working.
- Much of the food the tenant is claiming for was purchased by his father.
- Landlord's Witness #1 (he realtor) testified as follows:
 - He acted under the authority to the owner who asked him to get the rental unit ready for sale.
 - He and his workers never disposed of stain glass or tools.
 - The large fridge that was removed was dirty. The smaller fridge was working properly
 - At all times he was working with the authority of owner.

Analysis

Section 7 of the Act states as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 28 of the Residential Tenancy Act provides as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline #6 includes the following:

“B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed. “

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim to establish the following:

- a. Proof that the damage or loss exists
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- c. Verification of the Actual amount required to compensate for loss or to rectify the damage
- d. Proof that the claimant followed section 7(2) of the Act by doing whatever is reasonable to minimize the damage or loss

With regard to each of the Tenant's claims I find as follows:

- a. The tenant claimed the sum of \$879 for the cost of stain glass that was disposed of by the landlord. The agent of the landlord and the realtor deny they disposed of stain glass. I determined the tenant failed to prove this claim. Further, the tenant failed to prove the quantum of loss. He testified he talked to a representative of a stained glass company and he recorded the representative estimates of the loss. However, he failed to get verification from the stained glass company. The evidence relied on by the Tenant is not sufficient.
- b. The Tenant claims the sum of \$200.94 for the cost of tools. The landlord and the realtor deny they disposed of tools. I determined the tenant failed to prove this claim. Further, he failed to provide sufficient evidence of the quantum of loss.

- c. The Tenant stated he wished to withdraw his claim the sum of \$145.85 for the cost of bedding and kitchen ware as those items have been returned. .
- d. I determined the tenant is entitled to \$98.64 for the cost of food. The agent for the landlord removed the wrongly removed the fridge. There is a photo of the food that was lost. The landlord failed to prove these food items were purchased by his father.
- e. I determined the tenant is entitled to sum of \$110.54 for hydro.
- f. I dismissed the tenant's claim of \$67.60 for the cost of a transit pass and \$15.00 for a compass card. These claims relate to costs incurred to attend the Residential Tenancy Branch and involve the cost of preparing for litigation. An arbitrator does not have jurisdiction to award the cost of litigation with the exception of the cost of the filing fee.
- g. I dismissed the tenant's claims in the sum of \$46.32 for postage, \$35.02 for postage, and \$43.72 for photocopying as those claims relate to cost incurred to prosecute this litigation.
- h. I determined the tenant is entitled to compensation for the breach of the covenant of quiet enjoyment for the following reasons:
 - He was without hydro for 4 days
 - He was without gas for 46 days (affecting the heating and hot water)
 - The fridge was removed on August 7. The landlord replaced it with a much smaller fridge.
 - The back door was removed.
 - The landlord illegally entered the rental unit on a number of occasions
 - There was a number of different police complaints. .
 - He has suffered adverse health consequences

I determined the tenant is entitled to \$750 of this claim. I determined the amount claimed was excessive and I reduced the award for the following reasons:

- The rent was \$375 per month.
- There has been little interaction between the parties after the hearing at the end of September.
- The basis of the claim does not warrant the amount claimed given the evidence presented.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$959.18.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: December 17, 2016

Residential Tenancy Branch