



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR; MNDC; MNSD; OPT; LAT; SS; O

Introduction

This matter was reconvened from February 17, 2017, to consider the Tenants' Application for Dispute Resolution seeking a monetary award for emergency repairs and compensation for damage of loss under the Act, regulation or tenancy agreement; return of the security deposit; an Order of Possession for the Tenants; authorization to change the locks to the rental unit; an Order that the Tenants may serve the Landlords in a manner different than required by the Act; and other undisclosed Orders.

This matter was adjourned on February 17, 2017, due to service issues. An Interim Decision was issued on February 21, 2017, which should be read in conjunction with this Decision.

Both parties gave affirmed testimony at the reconvened Hearing.

The Landlord JX testified that on March 19, 2017, he went to the address that the Tenant TC gave for service for both of the Tenants at the Hearing on February 17, 2017, but the woman who came to the door refused to open it. The Landlord JX stated that the woman told him to go to the "side yard entrance", where he left his documentary evidence on a table beside the door. The Landlord JX stated that he did not leave a copy of the electronic evidence for the Tenants because he was concerned about "protecting others".

Pursuant to the provisions of Section 71 of the Act, I find that both of the Tenants were sufficiently served with the Landlord JX's documentary evidence, three days after leaving the documents at the Tenants' address for service. The Landlord did not serve the Tenants with his electronic evidence and therefore I invited him to provide oral testimony with respect to its contents.

The Tenant TC acknowledged receipt of the Landlord's documents "5 days ago". The Tenant TC stated that she had documentary evidence to support her Application, but that she did not serve the Landlord JX with those documents. The Residential Tenancy Branch received no

documentary evidence from the Tenant. The Tenant TC was invited to provide oral testimony with respect to the contents of the documents she was referring to.

The Tenant TC stated that she has entered into a new tenancy agreement with a different landlord and has lost track of the whereabouts of the Tenant ET. Therefore, she stated that the Tenants are not seeking an Order of Possession or authorization to change the locks at the rental unit. This portion of the Tenants' Application is dismissed.

The Tenants were provided with an address for service of the Landlord JX during the February 17th Hearing. Therefore, their application for a substituted service order is also dismissed.

I find that the Tenants did not provide sufficient details with respect to their request for "other" Orders. When a party seeks "other" orders on an Application for Dispute Resolution, that party must provide details with respect to what they are seeking in the "Details of Dispute" section of their Application. No such details were provided. As this portion of their Application contained unspecified details, this portion of their Application is also dismissed.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary award for the cost of emergency repairs, pursuant to the provisions of Section 33 of the Act?
- Are the Tenants entitled to compensation for damage or loss, pursuant to the provisions of Section 67 of the Act?
- Are the Tenants entitled to return of the security deposit, pursuant to the provisions of Section 38 of the Act?

Background and Evidence

Both parties provided extensive oral testimony during the reconvened Hearing, which was concluded after 95 minutes. In this Decision, I have recorded only the background and evidence that was relevant to the Tenants' Application.

The Tenant TC provided the following relevant testimony:

TC testified that she gave another person (hereinafter referred to as "M") \$1,000.00 to give to the Landlords as partial payment for December's \$1,600.00 rent payment. TC stated that the Landlord did not provide the Tenants with a valid 10 Day Notice to End Tenancy for Unpaid Rent, and illegally changed the locks to the rental unit on December 3, 2016. She stated that the Landlords gave her dog to M. She testified that the Landlords also gave M \$100.00 to take a cab. TC testified that the Tenant ET was in jail on December 3, 2016.

TC testified that she came back to the rental unit "two days later" and found all of her gardening tools, art work, a Persian rug worth \$15,000.00, her clothes and her son's clothes under a tarp

in the yard. TC submitted that the Landlord did not take due care of her belongings. The Tenant did not provide a Monetary Order Worksheet detailing her monetary claim of \$8,000.00.

TC testified that the Landlords “moved someone else in” in “January, 2017”The.

TC testified that she could not provide documents in support of her claim because the Landlords took “all of her paperwork”.

TC testified that she is claiming:

- \$300.00 for the cost of taking the sky train and the bus to and from the rental unit;
- \$2,800.00 to \$3,200.00 for the replacement cost of her tools, pruners, shears, and extension poles; and
- \$600.00 for the work that she performed for the Landlords, including: repairing the fence at the rental property; cleaning the gutters and roof; and servicing the pool; and
- An unspecified amount for replacing her, and her son's, clothing.

TC stated that the Landlord JX “pushed his way into” the rental unit and told M that he would not deal with M because M was not a tenant. TC did not stipulate a date that this took place.

The Landlords JX and LX provided the following relevant testimony:

The Landlords testified that the names of the other Landlords specified on the Tenants' Application are actually their “English names” and that they are the same people.

The Landlords testified that they did not receive any rent for the month of December, 2016 from the Tenants. They acknowledged receiving \$1,000.00 from M, but stated that it was received in November, and was partial payment for November, 2016, rent. They stated that the Tenants still owed \$600.00 for November's rent payment and that they did not receive any rent for the month of December, 2016.

The Landlords testified that they did not give the Tenants a Notice to End Tenancy, but that they had a “verbal agreement” with the Tenant ET that ET would move out at the end of October, 2016. They stated that in exchange, they would refund November's partial rent payment of \$1,000.00 and the \$800.00 security deposit would be returned. The Landlords stated that ET went into hospital sometime in October, 2016, and they reached a verbal agreement with the Tenant TC that she would move out of the rental unit on November 20, 2016. On November 27, or thereabouts, the Landlords were provided with a written agreement, signed by M, as representative for “TC, M, ET and all other people in residence at [the rental unit]”. A copy of the written agreement dated November 25, 2016, was provided in evidence. The Landlords also provided a hand written receipt, signed by M and dated November 30, 2016, acknowledging receipt of \$1,800.00 from the Landlords. The Landlords stated that this represented return of the security deposit, together with the \$1,000.00 rent that was paid for November, 2016.

The Landlords testified that all of the occupants moved out of the rental unit, except for the Tenant TC. They stated that there were "4 or 5" people who vacated the rental unit. The Landlords acknowledged that they changed the locks to the rental unit on December 3, 2016, but stated that they believed the tenancy was at an end pursuant to the written agreement they had with M.

With respect to the Tenant TC's possessions, the Landlords submitted that TC had advised that she would be getting a moving truck and that her belongings would be picked up on November 30, 2016. They stated that TC called them at about 6:00 p.m. and said that she was having difficulty securing a moving truck. When TC did not arrive with the truck by 9:00 p.m., the Landlords told her that they could not wait at the rental property any longer, and TC gave permission for the Landlords to "give the refund to M". The occupants had removed all of their belongings except for "trash and garbage" and M agreed to come back and move all of the remaining "stuff" by December 1, 2016. On December 5, 2016, the Landlords took the "junk" to the dump. The Landlords provided receipts for the dumping fees and the truck rental.

Analysis

It is important to note that this was a difficult Hearing. During the course of the reconvened Hearing, the Tenant TC was warned twice about interrupting the Landlords' testimony and muttering disparaging remarks about the Landlords' character.

Tenants' claim for a monetary award for the cost of emergency repairs

Section 33 of the Act provides:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

In this particular case, I find that the repairs for which the Tenant TC is seeking a monetary award are not “emergency repairs” as defined by Section 33 of the Act. Furthermore, even if I find that the described repairs were “emergency repairs” (which I do not) I find that the Tenant TC provided insufficient evidence that she complied with Section 33(3) of the Act. This portion of the Tenants’ claim is dismissed.

Tenants' claim for compensation for damage or loss

Section 7 of the Act provides:

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 67 of the Act provides that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The onus is on the party making the monetary claim to provide sufficient evidence to support their claim, on the balance of probabilities.

I dismiss this portion of the Tenants' claim for the following reasons:

- The Application for Dispute Resolution clearly provides that when a party makes a monetary claim, they are required to provide a "detailed calculation of any monetary claim" or to attach a Monetary Order Worksheet to their Application. The Tenants did not provide details, or a Monetary Order Worksheet.
- The Tenant TC did not provide documentary evidence or photographs of the items claimed for. Documentary evidence could include estimates for the cost of replacing the items.
- I find that the Tenant TC did not attempt to minimize her loss, pursuant to the provisions of Section 7(2) of the Act. Based on the testimony of both parties, I find that the Tenant TC had opportunity to remove her belongings from the rental property, but did not do so.

Tenants' claim for return of the security deposit

Section 38 of the Act deals with how security deposits must be applied at the end of a tenancy.

Section 38(1) of the Act provides:

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the tenancy ended on November 30, 2016; however, in this case, the Tenant TC provided insufficient evidence of if or when she provided the Landlords with her forwarding address in writing.

The Landlords testified that they returned the security deposit to M at the end of the tenancy. The Tenant TC submitted that M was not the Landlords' tenant and therefore the Landlords had no right to return the security deposit to M.

No written tenancy agreement was provided in evidence. The parties agreed that M had given rent to the Landlords, although they disagreed with respect to what month for which the rent was to be applied. M also gave the Landlords written notice of the end of tenancy date. The Tenant TC testified that she was going to remove her possessions on November 30, 2016, in accordance with M's notice to end the tenancy. I find, on the balance of probabilities, that M was a tenant or at the very least that the Landlords were justified in returning the security deposit to M at the end of the tenancy, as Tenant TC's agent.

I dismiss the Tenants' Application in its entirety for the reasons provided above.

Conclusion

The Tenants' Application is 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: March 31, 2017

Residential Tenancy Branch