



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with copies of the tenant's application and that both parties were served with their respective evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for damage and loss?

Is the tenant entitled to recovery of the filing fees from the landlord?

Background and Evidence

This tenancy took place for a short time during 2015. The tenant testified that no written tenancy agreement was ever prepared. The landlord said that there was a written tenancy agreement signed by the parties but one was not submitted into written evidence. The parties disagree on when the tenancy began. The landlord testified that

the tenancy began on June 1, 2015. The tenant testified that the tenancy began on May 15, 2015. The parties agreed that the tenancy ended on August 31, 2015. The monthly rent was \$1,700.00 payable on the first of the month. The rental unit is a stand-alone building situated on the landlord's property. The landlord resides in the main house on the property and the parties share a yard and parking area.

The tenant testified that the tenancy was stressful and not as initially promised by the landlord. The tenant said that the parties agreed that the landlord would provide some furniture in the rental unit and would remove all other items that were not agreed to. However, when the tenant took possession of the rental unit she found that the rental unit was filled with the landlord's personal items and furniture. The tenant said that clothing, office supplies, food and other pieces of furniture were left in the rental unit by the landlord. The tenant testified that she directed the commercial movers she had hired to remove the items and move them to the landlord's building. The tenant estimates that the presence of the items delayed the moving process by at least 2 hours.

The tenant testified that after the unwanted items were removed, the rental unit required cleaning. The tenant said that the landlord had promised the rental unit would be cleaned before the tenant took possession but the work was not done. The tenant said that she personally cleaned the rental unit with the assistance of family and friends. The tenant estimates that it took 4 people at least 6 hours to clean the rental unit.

The landlord testified that he was not aware of the tenant's complaints at the start of the tenancy. The landlord said that all of the items left in the rental unit were agreed to by the parties. He said he is unaware of any items being moved from the rental unit, into the landlord's unit during the move-in process. He said that he was unaware that the tenant cleaned the rental unit at the start of the tenancy.

The tenant submitted into written evidence an email exchange with the landlord where the landlord confirmed that a parking space would be provided. The tenant testified that soon after moving in she found that the parking space was difficult to access as the landlord would use the adjacent area to store tools and items. She said that she was told by the landlord that the parking space was no longer available and she would need to use street parking.

The landlord confirmed that parking space was a feature of the tenancy. The landlord said that the rental property has two open-air parking spaces as well as curbside parking available. As the parking spaces are small, the landlord allowed the tenant to

use the curbside parking. The landlord said that the street parking is legal and there is no danger of vehicles being towed.

The tenant testified that this tenancy was very stressful. She said that the landlord did not respect boundaries and harassed both she and her mother, who lived with her in the rental unit, frequently. She said that the volume of phone calls, text messages and the landlord's attendance at the rental unit was so excessive that she reported the issue to the police. The tenant provided into written evidence a statement from her mother stating that the landlord frequently came by the rental unit and threatened the tenants with eviction.

The tenant said the most egregious incident of the landlord's harassment occurred on the last day of the tenancy, August 31, 2015 when the landlord, brandishing a machete, chased a friend of the tenant's into the rental unit and attempted to force entry into the unit. The tenant said that emergency services were called and the landlord was charged with assault. The tenant said that the incident was frightening and she was subsequently served with a subpoena forcing her to appear as a witness and relive the incident.

The landlord testified that he did not communicate with the tenants any more than was necessary in the course of operating the rental unit. He said that his phone calls, text messages and visits would increase in frequency when he was collecting the monthly rent or needed to deal with the tenants regarding financial matters.

The landlord testified that the incident of August 31, 2015 involved an altercation with a third party and it was a coincidence that the third party was a friend of the tenant. He said that he was pursuing the third party who took shelter in the rental unit. He said that he did not intend any harm to the tenant but was seeking entry into the rental unit in pursuit of the third party. He testified that nothing became of the charge of assault arising from the incident.

The tenant makes an application for \$12,300.00 of loss and damages as a result of the landlord's actions or negligence. She claims the following amounts in her Monetary Order Worksheet:

Item	Amount
Refund of Rent (May – Aug, 2015)	\$5,100.00
Moving Expenses	\$1,000.00
Moving the Landlord's Items	\$250.00

Initial Cleaning of the Rental Unit	\$450.00
Loss of Parking Space	\$500.00
Loss of Quiet Enjoyment	\$5,000.00
Total:	\$12,300.00

Analysis

Section 67 of the *Act* allows me to issue a monetary award for damage or loss. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I will deal with each of the heads of damages in turn.

The tenant claims the full amount of her moving costs and rent paid during this tenancy. It is clear the tenant is seeking to be returned to the position she would have been in had she not entered into the tenancy agreement and moved into the rental unit. I find that there is little evidentiary foundation for this claim. While the tenant may regret having entered into this tenancy I find that she has not provided sufficient evidence that justifies a monetary award. The tenant had use of the rental unit and resided there for several months. I find that there is insufficient evidence that entitles the tenant to a full refund of rent for this tenancy. I further find that there is insufficient evidence that entitles the tenant to her claim for moving expenses. The tenant failed to provide receipts, invoices or records of the expenses incurred moving to or from the rental unit. While the tenant argues that this tenancy came to an end because of the conditions during the tenancy I find there is insufficient evidence that the tenant incurred costs moving out of the rental unit after a short period of time. I dismiss the claim made under these headings.

The tenant claims that the landlord's failure to remove his personal belongings from the rental unit caused the tenant to incur costs to have them moved and clean the rental unit. The tenant estimates that it took the commercial movers an additional 2 hours to remove the landlord's personal items from the rental unit. The tenant estimates that the rental unit required 6 hours of cleaning by 4 individuals after the landlord's items were removed. The landlord disputes the tenant's claim and states that the furniture that was in the rental unit was agreed upon with the tenant. He disputes that any of the

belongings were moved from the rental unit to the landlord's building. He said that he has no knowledge of the tenant undertaking cleaning at the start of the tenancy.

I found both parties to be forthright and consistent in their respective testimonies. However, based on the totality of the evidence I find there is insufficient evidence to support the tenant's claim. The tenant submitted into written evidence, photographs of the rental unit containing furniture and belongings. However, the tenant testified that some items, such as the dining room table and chairs, were agreed to be left in the rental unit with the landlord. I find that if there were large pieces of furniture left in the rental unit contrary to the tenancy agreement, it would have been reasonable to report the issue to the landlord and for there to be some written record of the dispute generated at the time. If the tenant incurred costs by having the commercial movers remove the items it is reasonable to expect an invoice or receipt showing this cost or the total cost of the movers. If the rental unit required cleaning for 6 hours, it is reasonable to expect that the issue would have been reported to the landlord at the time. Based on the totality of the evidence I find that the tenant has not sufficiently shown that there was a loss or that any loss was a result of the landlord's failure to comply with the terms of the tenancy agreement. I dismiss the tenant's application for damages under these headings.

The tenant makes a claim for a parking space that was promised under the tenancy agreement that was not available to her.

I accept the testimony of the parties and the written evidence submitted by the tenant that parking was a feature of this tenancy. I accept the testimony of the parties that the parking space became unavailable and the tenant parked adjacent to the rental property on the street. While I accept the landlord's evidence that street parking was permitted and safe I find that the tenant lost the parking space promised them, a service and facility that the landlord committed to provide when the parties entered this tenancy agreement.

The tenant suggests an amount of \$500.00 is an appropriate value of the loss under the circumstances. I find that the suggestion of \$500.00, nearly a third of the monthly rent, to be excessive. The tenant was able to park her vehicle adjacent to the rental property. There is no evidence that her vehicle was in greater danger of theft or exposure to the elements than parking in the original spot. I would characterize the change in the parking spot as a minor inconvenience rather than a major deficiency in the tenancy. Therefore, I find that a monetary award of \$150.00, approximately \$50.00 for each month that the promised parking space was unavailable, to be appropriate.

The tenant makes a claim for a monetary award of \$5,000.00 for loss of quiet enjoyment pursuant to section 28 of the *Act*. The *Act* provides that:

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;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that there is insufficient evidence that the volume of communication from the landlord was so excessive or threatening in nature that it constituted a substantial interference with the tenant's ordinary enjoyment of the premises. The tenant provided, what she stated were, quotes from the landlord's texts but did not submit copies of the original texts nor provide context for the quotes. While I accept the tenant's evidence that she reported the perceived harassment to the police I do not find that to be conclusive evidence of harassment.

I do find that pursuing someone, and attempting to force entry into the rental unit while brandishing a weapon, even if the intended quarry is not the tenant herself, to be a substantial interference with the tenant's right to quiet enjoyment.

Based on the totality of the written evidence and testimony of the parties I find that there is sufficient evidence that the incident of August 31, 2015 was a breach of the tenant's right to quiet enjoyment. While I accept the landlord's evidence that this was a one-time occurrence I find the incident to have understandably caused significant distress to the tenant. The tenant testified about her anxiety, fear and stress even after the tenancy ended.

While I find that the tenant suffered loss of quiet enjoyment as a result of the landlord's actions I am not satisfied that the tenant has provided sufficient evidence to justify the entire amount requested. Under the circumstances, I am issuing a monetary award in the amount of \$500.00, which reflects that the tenant did suffer a loss of quiet enjoyment in the tenancy.

The tenant was partially successful in her claim. As the tenant was only partially successful in this application, I find that the tenant is entitled to recover a portion of the

filing fee paid for this application. I find that the tenant is entitled to recover \$50.00 of the filing fee for this application from the landlord.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$700.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: April 24, 2017

Residential Tenancy Branch