



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with a tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement, as amended. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The hearing was held over two dates. An Interim Decision was issued on April 28, 2017 and should be read in conjunction with the decision. At the start of the reconvened hearing I confirmed that the tenant was in receipt of the landlord's documentary evidence and submissions, as so ordered.

Preliminary Issue(s)

In filing her application, the tenant had indicated she was seeking orders for the landlord to comply with the Act, regulations or tenancy agreement. The tenancy ended December 31, 2014 and I found the tenant's request for orders for the landlord to comply with the Act, regulations or tenancy agreement to be moot at this point. Therefore, I did not consider this request further and I make no orders for compliance. The balance of this decision pertains to the tenant's monetary claims against the landlord.

The landlord was of the position that the tenant's monetary claims are *res judicata* as they were heard and decided upon on December 9, 2014 during a previous dispute resolution proceeding (file number referred to on the cover page of this decision). The landlord had provided a copy of a Monetary Order issued to the tenant in the sum of \$400.00 as a result of the proceeding but not the decision that accompanied it. I retrieved a copy of the written decision from the Residential Tenancy Branch case management system. The landlord's recollection of the previous hearing appeared to be incorrect. For example, the landlord stated that the previous dispute resolution

proceeding dealt with her Application for Dispute Resolution for an Order of Possession. Yet, the previous proceeding was actually to hear the tenant's Application for Dispute Resolution to cancel a Notice to End Tenancy. An Order of Possession may be granted under a tenant's Application for Dispute Resolution to cancel a Notice to End Tenancy but the landlord had not filed an Application for Dispute Resolution. The landlord confirmed that she had only been to one previous hearing with this tenant.

The Residential Tenancy Branch records and the decision issued on December 9, 2014 show that the previous hearing was scheduled to deal with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and request for compensation of \$400.00. In the decision, the Arbitrator recorded that the parties reached an agreement that the tenancy would end December 31, 2014; that the tenant would receive compensation of \$400.00; and, that the security deposit would be held in trust to be administered in accordance with the Act. I understand that the \$400.00 in compensation represented a return of one-half of the monthly rent paid for September 2014 since the tenant moved into the rental unit in mid-September 2014. Accordingly, I was of the view that the only monetary claim that had been heard and decided upon already related to the tenant moving into the rental unit part way through the month of September 2014 and the monetary claim that was before me related to other alleged breaches of the Act, regulations or tenancy agreement. Therefore, I did not consider the claims before me to be *res judicata* and I informed the parties that I would proceed to hear the claims.

Issue(s) to be Decided

- a) Has the tenant established an entitlement to compensation for damages or loss under the Act, regulations or tenancy agreement, as claimed?
- b) Has the tenant established an entitlement to doubling of the security deposit?

Background and Evidence

The tenant moved into the rental unit on September 14, 2014 and moved out on December 31, 2014. The tenant paid a security deposit of \$400.00 and the monthly rent of \$800.00 each month. The tenant subsequently recovered \$400.00 of the rent paid for September 2014 as part of the settlement agreement reached at the previous hearing.

Although I was provided a considerable amount of oral testimony, written submissions, and evidence, with respect to these claims, with a view to brevity I have only summarized the parties' respective positions below.

The tenant submitted that a Monetary Order worksheet with her Amendment that provides a breakdown of the \$5,027.47 she seeks in compensation from the landlord. The tenant's claims are as follows:

a) Moving costs - \$400.00

The tenant seeks compensation of \$400.00 for costs to move out of the rental unit. The tenant testified that she paid this sum to her family members who helped her move. I noted that on the Monetary Order worksheet she had indicated she had a receipt from a "personal witness" but no receipt was produced and a witness was not called to testify. The tenant acknowledged that she had not provided any documentary or other corroborating evidence in support of this amount. Further, the tenant acknowledged that she had decided it was in her best interest to agree to end the tenancy during the previous dispute resolution proceeding held on December 9, 2014.

In light of the above, I found the tenant did not prove an entitlement to the compensation she was requesting and I dismissed this portion of her claim summarily without hearing from the landlord.

b) Motion detection camera - \$187.47

The tenant testified that she purchased a motion sensor camera on November 12, 2014 and installed it in the kitchen in an attempt to catch the landlord, or others acting on behalf of the landlord, entering her rental unit unlawfully. The tenant explained that she suspected someone was entering her unit because when she would go out she would leave a certain exterior light on but that when she returned home the light was off. Also, there was an occasion when the landlord sent people down to the rental unit to harass the tenant. The tenant hoped the camera would catch unlawful or dangerous events but the tenant acknowledged that the camera did not capture such images.

The tenant was asked about the people that came to harass her. The tenant could not recall with any certainty the date this happened or the nature of the event but the tenant identified the person by her first name and stated this person put her foot in the tenant's doorway.

The landlord testified that she did not ever recall seeing a motion sensor camera installed at the property. The landlord testified that she entered the unit lawfully after posting Notices to Enter and the person to whom the tenant was referring was sent to serve the tenant with a Notice to End Tenancy.

The tenant responded by stating the camera was not very noticeable and the tenant did this intentionally so that it would not be seen and turned off.

c) Gas, time, printing and delivering documents - \$50.00

The tenant submitted that she paid a witness to drive her places so that she could file and serve paperwork and evidence for this proceeding. As costs to prepare for and participate in a dispute resolution proceeding are not recoverable, except for the filing fee, I dismissed this portion of the tenant's claim summarily.

d) Doubling of security deposit (less security deposit returned) - \$400.00

The tenant submitted that she is entitled to doubling of the security deposit because the landlord returned her security deposit for more than 15 days after the tenancy ended. As to the date the tenant provided her forwarding address in writing, the tenant referred to a letter she wrote to the landlord October 23, 2014. The tenant acknowledged that the letter may not have been included in her evidence package. The tenant was asked to read from the letter during the hearing. The tenant read the letter and I confirmed with her that there is no forwarding address provided in the letter. The tenant then took the position that the landlord "knew" where she should send all of mail to her or otherwise make contact with her.

Since a landlord is not required to take action with respect to a security deposit until 15 days after the tenancy ends or after receiving the forwarding address in writing, whichever day is later, the tenant must be able to demonstrate that she provided the landlord with a forwarding address in writing, and the date this was done, in order to request double the security deposit. I found the tenant failed to demonstrate that. Therefore, I dismissed this portion of the tenant's application without hearing from the landlord.

e) Emotional/mental/physical stress; unfairly evicted; and, loss of quiet enjoyment - \$4,000.00

In brief, the tenant was of the position that she was treated poorly by the landlord during the tenancy by way of: unlawful entry, loss of privacy, being wrongfully evicted and falsely accused among other things. The tenant alluded to sexual advances by the landlord's spouse as being the landlord's motivation in doing so. The landlord was of the position the tenant's claim is frivolous and vexatious with malice prosecution and malice intent. The landlord is of the view that the tenant's submissions amount to

defamatory diatribe in an effort to slander her and defame her character. The landlord alluded to the tenant's mental disorder(s) as a basis for these claims against her.

As for the amount claimed, the tenant acknowledged that she arrived at the amount of \$4,000.00 rather abstractly and that it was difficult to quantify her losses. I confirmed with the tenant that during her entire tenancy she paid rent in the total sum of \$2,800.00 after recovering one-half month's rent for September 2014 and that her claim exceeds the amount she paid for her occupancy and if she were awarded \$4,000.00 she would be paid to live in the rental unit. In response, the tenant stated that she would leave the award to my discretion.

The tenant described a number of circumstances and events that form the basis for this claim, as follows:

- Door repair not made satisfactorily.
- The landlord's dog constantly barking although the tenant acknowledged that once she "threatened" to take the issue to the Residential Tenancy Branch the barking stopped. The tenant was of the position the dog should have been more properly trained and walked more.
- Mouldy smell in the rental unit.
- Branches were too close to her window that the landlord refused to have trimmed back.
- The landlord smoked on porch and smoke came in the tenant's open windows and the landlord would not move to a different relocation despite the tenant telling the landlord it bothered her.
- The landlord complained to the tenant about leaving lights on.
- The landlord would enter unit and turn lights off when tenant was out.
- The landlord left notes on the tenant's door.
- The landlord inspected the rental unit after posting a Notice of Entry but the tenant was out of town at the time and the tenant did not receive the Notice before the landlord inspected the unit.
- The landlord had another lady come to the rental unit and the woman was aggressive, putting her foot in the door. The tenant could not recall exactly what the purpose of the visit was and thought it was to either complain or give her an eviction notice.
- The landlord was making statements on a social media site that the tenant would leave fish in the rental unit when she moved out.
- The landlord accused the tenant of stealing.
- The landlord was motivated to end the tenancy without having to give her a 2 Month Notice to End Tenancy and compensation because the house was going

up for sale and because the landlord thought the tenant was using too much electricity.

The landlord responded as follows:

- The landlord made attempts to repair and replace the door; however, the door was a custom size and it took a fairly long time for the custom door to arrive and get installed after it was ordered.
- The landlord's dog is a guardian type dog and does bark when it feels threatened. The dog barked when the tenant viewed the property before deciding to rent it. The landlord cannot control the dog's barking when she is at work.
- The landlord did smoke on the porch because she smokes outside and the porch is covered. The landlord was smoking on the porch when the tenant arrived to view the property and the tenant still decided to rent the unit.
- When the tenant raised issues to the landlord's attention, such as the barking dog and the smoke smell, and considering the tenancy relationship was becoming toxic, the landlord offered to release the tenant from the tenancy agreement but the tenant chose to stay.
- Previous and current tenants do not have an issue with the landlord smoking or her dog's barking.
- The landlord asked the gardener to trim the branches by the tenant's windows.
- The rental unit had previously undergone a restoration and when the tenant complained of a mouldy smell the landlord had a contractor inspect the unit and it was determined there was no evidence of mould but there was a high level of humidity in the rental unit.
- The landlord did talk to the tenant and her support worker about lights being left on but the landlord did not enter the unit to turn the lights off. Rather, the light has a dual switch and the other switch was in the landlord's stairwell so the landlord was able to turn the light off without going into the rental unit.
- The landlord gave the tenant proper Notices of Entry before inspecting the unit and the tenant did not advise her she would be out of town for a number of days. There were two inspections during the tenancy and the landlord was of the view she complied with the requirements of the Act.
- The landlord did send a friend down to the rental unit for the purpose of serving the tenant with the eviction documents and this person was trying to get the tenant to take the documents from her.
- The landlord denied accusing the tenant of theft but did say to the tenant that there were items missing from the yard.

- The landlord was not motivated to end the tenancy to sell the house. The house could be sold with the tenant in place. The house was not put up for sale for a number of months after the tenancy ended, in April or May 2015.
- The landlord pointed out that the tenant has described what amounts to conspiracy theories but that was not the case in having her friend move into the property after the tenant moved out. Rather the landlord moved off the property and the landlord wanted a trusted friend to be at the property during the selling period.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this case, the tenant bears the burden of proof since she is the applicant. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Upon consideration of everything before me, I provide the following findings and reasons with respect to each component to of the tenant's monetary claim.

a) Moving costs

The tenant did not provide corroborating evidence to verify the amount claimed and this claim is dismissed.

b) Motion detection camera

I was provided disputed submissions as to whether the landlord unlawfully entered the rental unit to turn the lights out. The landlord submitted that the light in question had a

second switch in the stairwell that she had access to without going into the rental unit. Although the landlord did not provide photographic or video evidence of a second switch, considering the residential property has long since been sold I find it unreasonable to expect that the landlord would try to gain access to the residential property for such purposes. I consider this one of the drawbacks in the tenant waiting so long to pursue this claim.

The landlord also submitted evidence that she had posted Notices of Entry on October 28 and October 29, 2014 for entries to take place November 3 and 4, 2014 for purposes of an inspection and to investigate the tenant's complaint of a mouldy smell. While the tenant was out of town at the time of the entries I heard that the landlord was not notified of such and I find I am not satisfied that there was unlawful entry on part of the landlord.

Of further consideration is that the tenant acknowledged she did not capture any unlawful entry on the motion detection camera.

For all of these reasons, I find the tenant failed to provide sufficient basis and evidence to demonstrate an entitlement to recover the cost of the motion camera from the landlord and I dismiss this claim.

c) Gas, time, printing and delivering documents

As explained previously in this decision, costs to participate and prepare for a dispute resolution proceeding are not recoverable under the Act with the exception of the filing fee. The tenant did not pay a filing fee for this Application. Accordingly, this claim is dismissed.

d) Doubling of security deposit

As explained previously in this decision, the tenant failed to prove she had given a forwarding address to the landlord in writing. The end of the tenancy and providing the landlord a forwarding address in writing are the triggering events for the landlord to take action with respect to the security deposit. It is not enough to say the landlord "knew" where she could send the security deposit in seeking return of the security deposit, or doubling of it. Therefore, I find the tenant did not establish that the landlord failed to send the security deposit to the tenant within 15 days of receiving the tenant's written forwarding address and I dismiss the tenant's request for doubling.

e) Emotional/mental/physical stress; unfairly evicted; and, loss of quiet enjoyment

I was provided largely disputed submissions as to the events that the tenant pointed to in making this portion of her claim. However, it was abundantly clear to me from the submissions of both parties that this was a very unsuccessful and toxic tenancy relationship that soured shortly after the tenancy started. After hearing from both parties I am of the view that both parties likely contributed to the break down in the tenancy relationship. I have no doubt the tenant suffered emotional and/or mental distress during the tenancy; however, I find I am not certain this is the direct result of the landlord's actions or the tenant's interpretation of them considering the tenant's conduct during the hearing. I had noted that the tenant presented herself as easily agitated, quick to become emotional, and sounded somewhat paranoid during the hearing. Also of note is that in the tenant's written submissions she was of the view that she had "won" the previous dispute resolution proceeding. From the decision written by the Arbitrator, I find it is clear that the parties mutually agreed to bring the tenancy to an end. I find this to be an example of the tenant's distorted interpretation of the facts.

As an example of mutually aggravating conduct, the landlord had obtained an excerpt of postings on the tenant's social media site from another individual. On it the tenant had purportedly written:

"Wow some really creepy stalking action happening on my Facebook. Pathetic loser slumlord trying to use every lie she can think of to evict me and the arbitrator seen right thru it, still need to get outa this mold infested weird layout \$hithole n get to an actual HEALTHY place to live. Enjoy ur MS us fat ugly jealous pig don't blame me ur husband finds u so repulsive he wants to bang me instead as if id EVER go for it he's a slimy GOOF too LOL"

In response the landlord purportedly wrote:

"wow just make sure you put some chicken breast and fish guts in the heater vents before you leave teach them squids a lesson about being squids."

I find the tenant's comments provoking and highly inflammatory whereas the landlord's response appears to pale in comparison. I am not inclined to award the tenant compensation considering her significant contribution to the mutually toxic relationship.

Considering the tenant's conduct during the hearing, example of distorted interpretation of facts and provoking conduct toward the landlord, I find the tenant has not satisfied me

that she is entitled to compensation for emotional and mental distress from the landlord and I make no award for compensation for such.

I did not hear any submissions that would point to physical stress and I make no award for that. While the physical stress may be associated to the emotional and/or mental distress, I have dismissed the tenant's claim for compensation for emotional and mental distress and it follows that her request for physical distress must also fail.

The tenant considered herself unfairly evicted; however, I do not see that she was evicted. The tenant was served with a Notice to End Tenancy. Where a tenant is of the position that a Notice to End Tenancy was served without basis a tenant's remedy is to dispute the Notice, which the tenant did in this case. The tenant disputed the Notice and a hearing was scheduled to consider whether the landlord had a basis to evict the tenant. At the scheduled hearing the tenant agreed to end the tenancy. I am of the view the end of the tenancy was in the best interest of both parties. An argument for compensation may be made where, for example, a tenant has been served repeatedly with Notices to End Tenancy and they are found to be without merit; however, that was not the case in this tenancy. Therefore, I find there is no basis for concluding the tenant was unfairly evicted or that the tenant is entitled to compensation for receiving a Notice to End Tenancy.

As for loss of quiet enjoyment of the rental unit, I heard of a few circumstances that may point to loss of quiet enjoyment such as: unlawful entry; smoke entering the rental unit, a barking dog, and maintenance issues which I will address below.

- As for unlawful entry, as I found under part b) above, I find I am unsatisfied that there was unlawful entry on part of the landlord.
- The tenant complained that smoke entered her unit when she left her windows open. It was undisputed that the landlord smoked on the porch above the rental unit and that the tenant observed this prior to entering into the tenancy agreement; however, an applicant has an obligation to mitigate losses if they intend to seek compensation. I see the tenant had a few remedies available to her: close her windows; file an Application for Dispute Resolution to seek orders for compliance; or, end the tenancy as offered by the landlord. The tenant did not demonstrate that she did any of these things and I decline to grant her compensation due to failure to mitigate.
- The tenant complained of a barking dog and the landlord acknowledged the dog had a tendency to bark. However, the tenant also acknowledged that once she "threatened" to take the matter to arbitrator the barking stopped. Accordingly, it

would appear the tenant took action to mitigate and it was effective and I do not award the tenant compensation since her actions were effective.

- With respect to maintenance issues, the parties were in dispute as to whether there was an on-going issue with mould and tree branches. I find the disputed submissions insufficient for me to conclude the tenant is entitled to compensation for these items. As for the door, there was acknowledgement by the landlord that the door needed replacement and that it took some time to get a custom door installed. However, I find the tenant's request for a lump sum amount of \$4,000.00 for all her grievances leaves me at a loss as to the value to place on a door that did not work properly. It is the tenant's burden to provide a reasonable basis for determining compensation and I find she did not adequately set this out. Therefore, I decline to award the tenant compensation for maintenance issues.

In light of all of the above, I find the tenant failed to meet her burden to prove an entitlement to compensation for the items claimed and I dismiss the tenant's application in its entirety.

Conclusion

The tenant's application 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: July 4, 2017

Residential Tenancy Branch