



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order for the return of the security deposit - Section 38.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witness provided evidence under oath.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: The tenancy started in September 2016 and ended on May 1, 2017. Rent of \$700.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$350.00 as a security deposit.

The Tenant states that he cannot recall the exact date when its forwarding address was provided to the Landlord and states that it was “roughly a week after the end of the tenancy”. The Tenant states that it received the return of the security deposit on May 31, 2017. The Landlord states that it received the Tenant’s forwarding address on May 11, 2017 and returned the security deposit on May 26, 2017. The Tenant claims return

of double the security deposit. It is noted that the claim for the security deposit is detailed in the monetary order worksheet that was submitted with the application.

The Tenant states that due to the Landlord's breach of the act or tenancy agreement its aides had to work for longer hours with the Tenant. The Tenant states that the Tenant did not incur any costs in relation to its aides nor does the Tenant pay for the aides' wages. The Tenant claims the aides' wages of \$2,900.00 and \$2,000.00.

The Tenant states that between December 2016 and May 2017 the Landlord, who lived next door to the Tenant, yelled at the Tenant each time the Landlord spoke with the Tenant. The Tenant states that this occurred both while the Landlord was in the Tenant's unit and while the Landlord was outside of the Tenant's unit. The Tenant states that the Landlord threatened the Tenant with eviction and assault just about every day. The Tenant states that the threats were reported to the police but that no charges were laid. The Tenant states that the Landlord breached the Tenant's right to quiet enjoyment and claims \$2,000.00.

The Tenant's Witness, one of the aides, states that she worked at the Tenant's unit every day and that she heard the Landlord threaten to evict the Tenant a couple of times. The Witness states that she also heard the Landlord threaten to assault the Tenant a couple of times. The Witness states that the threats were reported to the police but that the Witness never gave the police any evidence of the threats as the police never contacted the Witness. The Witness specifically states that she heard the Landlord tell the Tenant that the Landlord has ADHD and that the Tenant can be evicted at any time.

The Witness states that she did witness the Landlord push the Tenant down the stairs on one occasion but cannot recall when. The Witness also states that the assault occurred on move-out day. The Witness states that she believes this incident was reported to the police and that the police and talked to the Witness but did not ask for a

statement as the police informed the Witness that no charge would be laid. The Witness states that the Landlord also threw two items of furniture at the Witness on move-out day and that this was also reported to the police without any charges forthcoming. The Witness states that the Landlords behavior on this date upset the Tenant very much. The Tenant provides a medical note in relation to the issues during the tenancy and this note indicates that the Tenant`s condition may have contributed to issues at home or that the issues at home may have contributed to the Tenant`s admission to hospital.

The Landlord states that he did not threaten to evict the Tenant. The Landlord states that the Tenant was given an eviction notice dated March 28, 2017. The Landlord states that he never threatened to assault the Tenant and would never do so as the Tenant is "handicapped". The Landlord states that on move-out day the Tenant charged the Landlord and the Landlord pushed the Tenant back in self-defence. The Landlord states that while the Tenant and he are about the same height the Tenant weighs approximately 100 lbs more than the Landlord. The Landlord states that the police were called by the Tenant and that the police were informed that the Landlord was only protecting himself. The Landlord states that no charges were laid in relation to this incident. The Landlord states that the Tenant was charged with assaulting the other tenant previously.

The Landlord states that when the Tenant complained about the other tenant the Landlord spoke with this tenancy and determined that both warranted a warning. The Landlord states that after the Tenant was given the eviction notice the Tenant complained about the other tenant once or twice more and that the Landlord spoke with this tenant on each occasion. The Landlord states that the Tenant was also disruptive and that the Landlord received many more complaints about the Tenant.

The Tenant states that as part of the tenancy agreement he was provided with unlimited access to laundry. The Tenant states that on one occasion sometime after February 17,

2017 his aide was verbally abused by another tenant while the aide was doing the Tenant's laundry. The Tenant states that as a result of this incident he was afraid to do his laundry on site and that the laundry was then done off site. The Tenant states that the incident with the other tenant and the laundry was reported to the Landlord who failed to do anything. The Tenant states that they had to do laundry off-site 2 or 3 times per week until the end of the tenancy. The Tenant states that at the end of April 2017 the Tenant decided to use the laundry facilities at the building and although the other tenant again bothered the Tenant, he chose to ignore this tenant and completed his laundry. The Tenant claims \$620.00 for loss of use of laundry in March 2017 and \$600.00 for loss of use in April 2017.

The Landlord states that he was not aware that the Tenant did his laundry off site and does not recall the Tenant ever raising any problems with the laundry. The Tenant states that the Landlord was informed of the issue as the Tenant's accountant attempted to intervene and wrote a letter to the Landlord about the laundry problems. The Tenant provides a copy of this letter dated March 17, 2017.

The Tenant states that although he did not originally want to move out of the unit and that the Tenant originally disputed the notice to end tenancy for cause, the Tenant then decided to move out of the unit because of the continued constant harassment by the Landlord. The Tenant claims the cost of the move in the amount of \$350.00.

The Tenant states that at no cost to the Tenant a special toilet seat was installed in the unit. The Tenant states that the Landlord promised to return the seat to the Tenant and never did. The Tenant states that it purchased another seat at the Tenant's cost of \$50.00 and had a friend install the seat. The Tenant claims \$300.00. The Landlord states that during the previous hearing on May 10, 2017 the Tenant was told to collect the seat. The Landlord states that no person ever did. The Landlord agrees to make the seat available to the Tenant for pick up on December 12, 2017 between the hours of 9:00 a.m. and 5:00 p.m. and the Tenant agrees to attend to the Landlord's unit to collect

the seat during this time. The Landlord agrees to place the seat on a chair outside the Landlord's door.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the Tenant's vague evidence on the provision of the security deposit I accept the Landlord's evidence that the Tenant provided its forwarding address on May 11, 2017. Based on the Landlord's evidence that the security deposit was returned to the Tenant on May 26, 2017 I find that the Landlord failed to return the security deposit within the allowable time and that the Tenant is therefore entitled to return of double the security deposit plus zero interest of **\$700.00**. Deducting the **\$350.00** already returned leaves **\$350.00** outstanding to the Tenant.

Section 6(1) of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. Section 7 of the Act provides that 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. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. Given the evidence that the police were called on the move-out day, the medical evidence that the Tenant may cause or contribute to its own problems and the evidence that no criminal charges were laid against the Landlord in relation to the incident on move-out day I find that the Tenant has not substantiated that the Landlord breached the Tenant's right to quiet enjoyment on move-out day. The Witness evidence in relation to the assault of the Tenant and the Witness not providing

evidence of this assault or previous threats of assaults to the police does not seem to ring true and given the Landlord's evidence that the Tenant was never threatened with assault I find on a balance of probabilities that the Landlord did not threaten the Tenant during the tenancy. I do not consider the Landlord's act to inform the Tenant that he may be evicted to be threats as the Landlord is entitled to evict a Tenant with valid reason. For these reasons I find that the Tenant has provided insufficient evidence to substantiate on a balance of probabilities that its right to quiet enjoyment was breached and I dismiss the Tenant's claim for compensation for such a breach.

While it may be that the other tenants in the building caused problems with the laundry the Tenant has provided no basis for the monetary amount claimed. There is no supporting evidence that the amounts claimed were costs incurred by the Tenant. Given the evidence that the Tenant's aides did the laundry and there is no evidence that that the laundry being done out of the unit caused the Tenant any losses or inconvenience, I find that the Tenant has failed to substantiated that it incurred the costs claimed. I therefore dismiss the claim in relation to the laundry. As there is no evidence that the Tenant incurred any wages costs or losses as a result of the Landlord's acts I dismiss the claims for the Tenant's aides' wages.

The Tenant's remedy in relation to the Landlord seeking to evict the Tenant was to dispute the notice to end tenancy as invalid. The Landlord is entitled to end a tenancy with a valid notice and since the Tenant chose to move out instead of disputing the notice to end tenancy, I find that the Tenant has not substantiated that the Landlord caused the Tenant to move as a result of any breach by the Landlord. I therefore dismiss the claim for moving costs.

Given the agreement of the Parties to collect the toilet seat I find that this claim has been settled and I dismiss the claim for compensation in relation to the toilet seat.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$350.00**. If necessary, this order may be filed in the Small Claims 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 15, 2017

Residential Tenancy Branch