



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI MNR MND MNDC MNSD O FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord applied for: a monetary order for rental loss, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied under the *Act* for: a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; an order that the landlord comply with the *Act* (with respect to both security deposit return and rental increase recovery); and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing, including amendments and additional documentary evidence.

Issue(s) to be Decided

Is either the landlord or the tenant entitled to a monetary order against the other party, including the filing fee for their application? Is the landlord entitled to retain the tenant's security deposit? Is the tenant entitled to the return of her security deposit? Is the tenant entitled to a return of an amount paid as a result of an unauthorized additional rent increase by the landlord?

Background and Evidence

While I have turned my mind to all the testimony of both parties and witnesses as well as the documentary evidence including but not limited to banking statements, witness statements, photographs, e-mail correspondence, and a variety of other documentary submissions, not all details of the respective submissions and arguments of the parties are reproduced here: The principal aspects of each party's claim are set out below within background and evidence and my findings on each party's claim are set out in the analysis section of this decision.

This tenancy began April 2017 as a 12 month fixed term with a rental amount of \$1500.00 payable on the thirtieth (30th) of each month. A copy of the residential tenancy agreement was submitted as evidence for this hearing with an end date of the fixed term of April 28, 2018. The portion of the agreement describing the length of the tenancy is initialled by both parties. An extensive addendum to the residential tenancy agreement provides further details regarding; method of payment of rent; the use and payment of utilities; subletting; furniture items provided; as well as monthly inspections; and includes the following relevant terms,

Hydro utilities are based on current reasonable use at \$77 per month. Should the hydro increase by more than \$10 per month the tenant agrees to pay the increased amount within ...15... days upon receipt of the hydro bill

And

The tenant understands and agrees that the Landlord and/or family may be on the property and stay in a Motorhome on the property at periodic times through the tenancy term

The landlord claims that the tenant ended the tenancy prior to the end of the fixed term and left damage to the rental unit. The tenant vacated the rental unit on September 2, 2017. The landlord continues to hold a security deposit of \$750.00 paid by the tenant at the outset of the tenancy (March 22, 2017). The landlord sought to retain the security deposit towards his costs at the end of this tenancy. The tenant sought the return of her security deposit as well as an amount for overpayment of rent. The tenant also claimed that the landlord increased the rent beyond the allowable annual amount and that the landlord is responsible for her loss of quiet enjoyment during this tenancy.

A copy of the tenants' letter as notice to end this tenancy dated July 21, 2017 was submitted as evidence for this hearing. The tenant wrote in her notice, and testified at

this hearing, that she was forced to agree to the addendum to her tenancy agreement. The letter also indicates that her rent was increased in an amount above the annual allowable rental increase amount.

A form titled, "Acknowledgement of Early End of Tenancy Notice" signed by both the landlord and the tenant was submitted as evidence for this hearing. The form is dated July 25, 2017 and it reads,

I acknowledge receipt of your notice ending your tenancy received on 24/07/17 [by] email. Please be advised that this is a short notice and does not comply with the Residential Tenancy Act's requirement...Under a fixed term tenancy agreement, you may not given notice to end the tenancy effective prior to the end of the fixed term ...[29/April/2018]... I will do everything reasonable to find a new tenant...however if I am unable to do so, or if I am only able to rent your rental unit for an amount lower than your rent, you will be responsible for any loss of rent I incur until the end of this term. This acknowledgement is not a waiver of my right to claim liquidated damages for early termination of a fixed term tenancy.

During the hearing, the tenant testified that she felt that she was forced to sign the early end tenancy notice and to leave the rental unit. She testified that she had no other option because the landlord was using her electricity for a camper on the property and that the landlord was also increasing her rental amount by increasing the amount of utilities she was required to pay. The tenant testified that she did not anticipate and was not advised that anyone else would reside on the premises.

The tenant also testified that the landlord would enter her property without notice to access the shed on the property where he stored his own items. The tenant testified that she had a young daughter living with her and she did not feel comfortable continuing to live in the rental unit because of the strange behaviour of the landlord. She claimed that the landlord should pay her moving expenses. At the hearing, she stated she did not submit any receipts relating to her move but that the costs totalled over \$500.00.

The tenant testified that she provided her forwarding address to the landlord on September 2, 2017 but that the landlord has still not returned her \$750.00 security deposit. She sought double the amount of her deposit as the landlord failed to apply to retain her deposit within the 15 day timeline to do so.

The tenant also submitted that the landlord should pay her costs for a condensed summer course she was attending during her tenancy. She testified that she had to drop out of the program because of the stress and frustration of dealing with this landlord. She also testified that she had to drop the course because she needed to focus on finding a new place to live. She submitted a copy of her payment of the registration for the course however she did not submit any documentary evidence regarding her withdrawal from the course.

The tenant testified that she suffered a loss of quiet enjoyment during her tenancy as a result of the landlord's actions including; allowing others to live on the property; entering the property (not rental unit but exterior area of the residential premises) without any notice to the tenant; and in leaving a shed standing on the property with garbage, insects and debris without timely repair. She referred to a doctor's note dated August 29, 2017 in her evidence that reads,

[Tenant] ... consulted today about housing stress which is affecting her sleep and the impact that the insomnia is having on her health...

The tenant applied for a monetary order in the amount of \$4743.77 for the following items,

Item	Amount
Moving Expenses	\$500.00
Cost of Course (Withdrawal)	393.77
Loss of quiet enjoyment	3000.00
Return of Security Deposit	750.00
Recovery of Filing Fee	100.00
Total Monetary Amount Sought by Tenant	\$4743.77

The landlord did not submit a particularized breakdown the \$13,062.50 he sought against the tenant however during his testimony he provided details of the amount sought as follows,

Item	Amount
Loss of Rent: End of Tenancy (8 months to end tenancy x \$1500.00 per month)	\$12,000.00
Cleaning & repairs to Unit at the end of tenancy	962.50
Recovery of Filing Fee for this Application	100.00
Total Monetary Amount Sought by Landlord	\$13,062.50

The landlord claimed that he is entitled to the rental amount for the remainder of the fixed term tenancy. He testified that the tenant put a stop payment on her September 2017 rent in the amount of \$1500.00 and did not provide any monthly rental payments after this date. He testified that, since the fixed term tenancy was set to continue until April 2018, he is entitled to recover a total rental amount of \$12,000.00 for 8 months of rental loss. The landlord submitted banking statements to show that the tenant stopped payment on her September 2017 rent payment. The tenant did not dispute the landlord's evidence that she cancelled all other scheduled rental payments to the landlord. The tenant provided a convoluted explanation regarding the cancellation of the rental payments that I will not reproduce here.

As evidence of his efforts to re-rent the property, the landlord also included in his banking statements payments to an online advertising company, renewed monthly since September 2017 seeking a new tenant. As well, the landlord submitted a copy of the advertisement that appears in the window on the nearby military base seeking a tenant for the property. He also submitted copies of the various advertisements. He and his partner both testified that the rental unit has not yet been re-rented.

The landlord confirmed testimony of the tenant that she referred one or two potential renters for his consideration. The landlord testified that he was reluctant to consider these renters but responded to them regardless. The landlord provided email correspondence between himself and one of the tenant's referrals who ultimately declined to rent the unit because of its location.

A copy of the condition inspection report for this tenancy was provided as evidence for this hearing. At move-in, the report indicated that the unit was in satisfactory condition. At move-out, the report indicated that there was damage to the rental unit including broken cupboard doors; a bathroom vanity damaged; nail holes left where the tenant removed the landlord's décor and insufficient cleaning in general. The tenant testified that she was not given a copy of the condition inspection report at move-out and could not comment on it. She submitted a brief letter from a witness who wrote that the landlord refused to give the tenant a copy of the condition inspection report after conducting the move-out walk through however the letter indicates that the witness took the condition inspection report as well as photographs of the rental unit. The tenant submitted the photographs for this hearing including photographs of the shed with debris, flies and other organic waste. The tenant provided undisputed testimony that she requested the landlord remove or repair the shed but that it took him several months and badgering by the tenant to do so.

The tenant also submitted two letters from two neighbours to the rental unit property who described aggressive, impolite behaviour by the landlord to the tenant as well as the state of the “disgusting shed” on the property. One of the neighbours testified at this hearing indicating that the landlord was negligent in leaving the shed on the property as long as he did as well as poor behaviour by the landlord including speaking harshly to the tenant’s young daughter. The tenant submitted email correspondence from a previous tenant of the landlord who complained to the landlord, in email of showing up to the property ‘unscheduled’ and ‘unannounced’ and an odor on the property as well as the previous tenant’s discomfort with the landlord’s behaviour and demeanor.

Analysis

The tenant provided a vacate notice prior to her move out and vacated the rental unit prior to the end of her agreed-to 12 month fixed term tenancy. I find that the tenant made an informed choice to end the tenancy early. The tenancy was set as a fixed term from the outset. The residential tenancy agreement is signed and initialled by both parties. I find that the tenant agreed to the terms of the tenancy and the consequences of ending the fixed term tenancy early. These terms were agreed to by the tenant at the outset of this tenancy and again when she provided her notice to end tenancy.

The residential tenancy agreement is clear that this tenancy was intended to continue for 12 months from April 1, 2017. Residential Tenancy Policy Guideline No. 30 provides direction on the definition and terms of a fixed term tenancy as used in section 44 of the Act:

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date...

The tenant claimed that she was both forced to sign the residential tenancy agreement addendum and forced to vacate the rental unit early. I find that the tenant has provided insufficient evidence to support this claim. I find that the tenant did not sufficiently show or prove circumstances that warranted an early end to this tenancy. The tenant raised a variety of issues at the residential premises, including the landlord’s presence at the rental unit, a smelly shed in need of repair, an additional person on the premises in a motor home; and the rental increase by increasing the tenant’s hydro cost. The issue of the landlord’s presence and additional person in the motor home as well as the alleged unauthorized rent increase are addressed within the tenancy agreement (and addendum) signed at the outset of this tenancy.

Relying on the tenancy agreement, addendum and other relevant documents signed by both parties (including an agreement to end the fixed term tenancy early), I find that;

- The tenant was informed and agreed that the landlord or another person may reside in the motor home during the course of her tenancy. The tenant did not dispute that the landlord's evidence that the motor home was on the property at the outset of the tenancy or the reference to the motor home in the tenancy agreement.
- The tenant agreed in the addendum to the residential tenancy agreement to an increase in the hydro paid by the tenant when the hydro bill exceeded \$87.00 per month. I find that the landlord provided proof of the agreement between parties as well as the increased cost by providing the bills for the residential premises. I find that the tenant provided insufficient evidence to show that the increase in hydro was related to the use of the motor home on the residential property or that it equated to an unauthorized rental increase.
- The tenant provided evidence beyond her own testimony (emails and witness testimony) that the shed on the property smelled. The landlord provided evidence that the shed was torn down and removed. The landlord's action to address the shed could have been expedited based on the evidence provided.
- The landlord was rude however he did not enter the rental unit without notice or in a way that was outside of the scope of the residential tenancy agreement or the Act.

I accept the landlord's testimony at this hearing as well as the supporting documents supplied by the landlord to document his efforts to re-rent the unit and mitigate his loss of rental income from the tenant. I accept the landlord's explanation and evidence regarding the prospective tenants referred by the tenant—they simply did not work out. I find that the landlord provided sufficient evidence to prove that he has made sufficient efforts to re-rent the unit from the date that the tenant vacated the rental unit (September 2017) to present and that, as of the date of this hearing, he has been unable to re-rent the unit. The landlord's partner provided evidence at the hearing corroborating the landlord's evidence.

Based on the evidence before me, I find that the landlord has sufficiently mitigated any rental loss from September 2017 to the date of this hearing, I find that the landlord is entitled to a monetary amount for the rental loss that resulted from the tenant's early end to the tenancy to the date of this hearing however I decline to issue an award that assumes the landlord's continued loss of rent after the date of this hearing. Therefore, I

find that the landlord is entitled to 5 months of rent at \$1500.00 each month for a total of \$7500.00 in rental loss.

While I find that the tenant's explanations and submissions regarding her lack of comfort at the rental unit did not amount to a reason that justified the tenant's early end of the fixed term tenancy, I do accept the tenant's testimony that she was impacted by some of the action or inaction by the landlord. I accept that the tenant lived with an unsightly and smelly shed during at least 3 months of her 5 month tenancy. I find that, while not meeting a threshold that required her to end the tenancy, the tenant was impacted by the way in which the landlord communicated – aggressively. I accept the evidence that, while it should have been anticipated by the tenant, the tenant was uncomfortable with someone residing in the motor home on the property.

I refer to the relevant provision of the Act with respect to an impact on a tenant's 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.*

Based on all of the evidence and the witness statements submitted by the tenant with respect to the smelly shed, I find that the landlord did not address this matter as expediently as he could have. As well, I find that the landlord could have taken steps to provide more notice and less intrusion to the tenant's privacy when he or others would reside in the motor home.

Residential Tenancy Policy Guideline No 6 addresses the tenant's right to 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.

I find that the landlord was aware of the tenant's problems or concerns as described above. Therefore, I find that the tenant is entitled to a nominal amount of \$250.00 in compensation based on the uncomfortable nature of her tenancy and in accordance with section 28.

With respect to the remaining portions of the tenant's claim, I find that the tenant has not provided sufficient evidence that she withdrew from her summer course as a result of the actions of the landlord. She did not provide the documentation of her withdrawal from the course or evidence to show the link between her withdrawal and her problems with the landlord. I dismiss the portion of her application to recover the cost of the summer course.

I find that the tenant also provided insufficient evidence that she was either forced to sign the tenancy agreement or that she was forced to vacate the rental unit when she did, prior to the end of the agreed-upon fixed term. I find she was not forced (or under any form of duress) in signing the early end to the tenancy form and thereby agreed to the terms of the tenancy agreement; the addendum; and the end of tenancy form. I find that the tenant is not entitled to be compensated by the landlord for any costs of her move. Further, I note that the tenant did not provide any proof of actual expenses for moving and therefore did not provide sufficient of any of costs.

When a landlord and tenant enter into a tenancy agreement, written or verbal, each is expected to meet their responsibilities under the Act; a tenant is expected to pay rent; a

landlord is expected to provide the premises as agreed to. If a tenant is deprived of the use of all or part of the premises, the tenant may be entitled to damages. The types of damages an arbitrator may award are; out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act*; an amount reflecting a general loss where it is not possible to place an actual value on the loss; “nominal damages” where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right; and finally aggravated damages for significant infractions by the landlord to the tenant.

I find that the landlord is sufficiently compensated by the rental loss amount in consideration of the tenant’s breach of the terms of their residential tenancy agreement. I find that the landlord did not provide sufficient evidence of his costs for cleaning or repairs to support a claim for damage to the rental unit and therefore that portion of his application is dismissed.

In accordance with section 72 of the *Act*, I find that the landlord is entitled to retain the tenant’s \$750.00 security deposit in partial recovery of his rental loss due to the early end to this tenancy. The landlord’s application for dispute resolution was made within 15 days of the tenant’s provision of her forwarding address and therefore she is not entitled to have the amount of her security deposit doubled.

As both parties were partially successful in their applications, I find that both parties shall be responsible for their own filing fees.

Item	Amount
Landlord’s Rental Loss for 5 months (September 2017 – February 2018)	\$7, 500.00
Less Tenant’s Loss of quiet enjoyment award	-250.00
Less Tenant’s Security deposit	-750.00
Total Monetary Order to Landlord	\$6500.00

I find that the landlord did not impose an unauthorized additional rent increase but instead relied on an agreed-upon term within the addendum to the residential tenancy agreement regarding the amount of utilities to be paid by the tenant. Therefore, in determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43, I find that the tenant’s increased utilities cost was made in accordance with the *Act*.

Conclusion

I issue a monetary order to the landlord in the amount of \$6250.00.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 1, 2018

Residential Tenancy Branch