



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP

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 personal property - Section 64; and

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

Preliminary matter

The Landlord provided the correct spelling of his last name and the Tenant agreed that this correct spelling be used for the application. Given the Tenant’s agreement I amend the style of cause to set out the correct spelling of the Landlord’s last name.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to an order for the return of personal property?

Background and Evidence

The tenancy started on February 1, 2014. Rent of \$1,800.00 is payable on the first day of each month. A previous Decision dated May 15, 2018 sets out a mutual agreement between the Parties as follows:

1. The tenant agreed to pay the landlord full rent by June 1, 2018 AND July 1, 2018;

2. Both parties agreed that this tenancy will end by 1:00 p.m. on July 31, 2018, by which time the tenant and any other occupants will have vacated the rental unit, in the event that the tenant abides by condition #1 above. In that event, all of the landlord's notices to end tenancy issued to the tenant, to date, are cancelled and of no force or effect;
3. Both parties agreed that this tenancy will end pursuant to a five (5) day Order of Possession, if the tenant does not abide by condition 1 above;
4. The landlord agreed to have a licensed professional sufficiently clean, as per the professional's opinion, the rental unit septic tank and any debris at the septic tank, by May 18, 2018 as per the following terms;
 - a. The landlord will provide at least 24 hours' notice to the tenant as per section 29 of the *Act*, prior to the above work being completed;
 - b. The tenant will provide access to the rental unit for the above work to be completed whether he is personally in attendance or not;
5. Both parties agreed that if the landlord does not ensure that the septic tank is sufficiently cleaned as per the licensed professional's opinion, by May 18, 2018, the tenant is entitled to deduct \$1,800.00 from his monthly rent, beginning on the first day of the following month, until it is completed;
6. The tenant agreed that this settlement agreement also constitutes a final and binding resolution of his application.

The Tenant states that the Landlord did not clean the septic tank and area as required. The Tenant provides a letters from the health authority indicating that on June 19, 2018 pooling water was observed around the perimeter of the house and septic tank and that following a test of this water it was confirmed that sewage was "surfacing onto the back yard of the property and overflowing from the septic tank." Another letter dated June 29, 2018 indicated that the health hazard was recurring on this date as well. The Tenant states that the Landlord was notified of the continuing problems and the letters from the health authority. The Tenant states that the Landlord agreed in the previous Decision to pay the Tenant compensation until the septic tank was cleaned and as the tank and

lawn area was not sufficiently cleaned prior to July 31, 2018 the Tenant now claims compensation for June and July 2018 as agreed in the amount of \$3,600.00. The Tenant states that, despite the agreement that this amount could be deducted from the rent, the Decision also stops any deduction by providing the Landlord with an order of possession if the rents are not paid in full for June and July 2018. The Tenant states that the Landlord did not start repairs to the sewage system until July 25, 2018.

The Landlord states that the septic tank was emptied on May 16, 2018 and that the debris around the tank was also cleaned. The Landlord provides a receipt from the company that completed the work. The Landlord states that the sewage problem was not related to the septic tank but to a broken pipe that was discovered in May or June 2018. The Landlord also states that he was informed in May 2018 that there was a pipe issue. The Landlord states that he was not able to make the repairs to the pipe as the Tenant was making threats and that there was access issues. The Landlord submits that a police file was opened in relation to these problems with the Tenant. The Landlord states that the health authority agreed that the Landlord would have until August 31, 2018 to make repairs to the pipes. The Landlord states that it provides a copy of this letter for evidence.

The Tenant states that the health authority also posted a notice on the door of the unit that the unit was unsafe to occupy as of July 11, 2018. The Tenant states that it provided a photo of this letter as evidence. The Tenant states that as a result of this letter three of his roommates left the unit while the Tenant stayed until July 31, 2018 to keep the unit secure. The Tenant states that the roommates had paid their full share of the rent to the Tenant for July 2018 but that the Tenant could not reimburse them. The Tenant claims compensation for the roommates having to leave the unit before July 31, 2018 and for the unit not being safe to occupy for the period July 11 to 31, 2018 in the amount of \$2,100.00.

The Landlord states that the letter posted on the unit was not from the city and not the health authority. The Landlord states that the unit was found to be unsafe due to a fire hazard from hoarding. The Landlord states that the city discussed the matter with the Landlord and informed the Landlord that although it was set out as being "unsafe to occupy" it did not mean that the Tenants had to vacate the unit and that it was set out only to safeguard any liability on the part of the city.

The Tenant states that he moved out of the unit on July 31, 2018 and left various personal property items inside and outside the unit. The Tenant states that he moved what he could and could not remove it all as he was short of funds was not able to remove all his belongings by July 31, 2018. The Tenant states that he informed the Landlord's agent that the best was done to date. The Tenant states that the Landlord or the agent never called the Tenant to come and collect the remainder of his property and that the Landlord advertised online for anyone to come and take free articles from the unit. The Tenant claims return of his personal property left at the unit.

The Landlord states that they were at the unit each day after July 31, 2018 waiting to take possession of the unit until August 3, 2018 when his agent was hired to take over. The Landlord states that his agent informed the Landlord on August 4, 2018 that the Tenant has moved out on that date and that the keys to the unit had been left in the mailbox. The Landlord states that the agent told the Landlord that the Tenant had taken all the belongings and that the Tenant had told the agent that the Landlord could deal with the rest. The Landlord provides a statement from the agent to this effect. The Landlord states that on August 3, 2018 the Tenant also told the Landlord that the Landlord could deal with all the remaining items. The Landlord states that there was so much garbage and clutter that it took 6 disposal teams to remove it all. The Landlord states that the Tenant had over two months to prepare for the move-out of the unit.

The Landlord's Witness states that on Friday August 3, 2018 the Witness heard the Tenant tell the Landlord in front of the agent that "this is all your stuff now, deal with it".

The Tenant states that on August 3, 2018 he was referring to the items left in the carport that was not the Tenant's belongings. The Tenant states that he never saw the Landlord's Witness on the property on August 3, 2018 and that the Witness may not be credible as the Witness used to be the Tenant's roommate and that the Tenant evicted the Witness after a month of his occupancy. He obtained a new tenancy for an August 1, 2018 start date and that he did not vacate the unit until August 4, 2018. The Tenant states that he does not believe that he was at the unit on August 3, 2018. The Tenant agrees that the Landlord's agent was told that everything was out of the house and that it was all that the Tenant could do. The Tenant states that he only had funds for one day for the rented moving vehicle and that although he told the agent that he was done, he meant that he was only done for that time and that there should be no inference that the Tenant did not mean to collect the rest of his property.

The Tenant confirms that the total amount claimed at the hearing amounts to \$5,700.00. The Tenant states that it has no idea why he claimed \$6,300.00 in its application.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. The salient part of the Decision in relation to the Tenant's claim for compensation from the sewage system is as follows: "The landlord agreed to have a licensed professional sufficiently clean, as per the professional's opinion, the rental unit septic tank and any debris at the septic tank. . . . " and ". . . if the landlord does not ensure that the septic tank is sufficiently cleaned as per the licensed professional's opinion, by May 18, 2018, the tenant is entitled to deduct \$1,800.00 from his monthly rent, beginning on the first day of the following month, until it is completed."

Based on the Landlord's own evidence I find that the Landlord knew in May 2018 that the septic system had a problem with the pipes. I consider that the debris around the

septic tank would necessarily include debris from the defective pipes. This brings me to consider that the Landlord was likely also aware by May 18, 2018 that merely emptying the tank would be insufficient to remedy the problem with the “debris at the septic tank”. Further there is nothing in the Landlord’s invoice that indicates any work beyond emptying the tank was completed. The Landlord did not provide any evidence of any professional involvement or opinion in relation to the satisfactory resolution of the septic tank and area. For these reasons I find that the Landlord has not provided sufficient evidence that it fulfilled its agreement to sufficiently clean septic tank and area. The Landlord’s evidence that the health authority allowed the Landlord to delay the repairs to the septic system is not relevant to the agreement between the Parties for compensation if the clean-up was not done according to the Decision.

Although the terms of the mutual agreement providing for the end of the tenancy where the full rent is not paid appears to conflict with the inability of the Tenant to deduct the agreed upon amount from the rent, I do not consider that this conflict denies the Tenant the compensation amount agreed upon where the circumstances warrant the compensation. As the Landlord has not complied with the agreement I find that the Landlord must now pay the compensation as agreed for the months of June and July 2018 in the sum of **\$3,600.00** (\$1,800.00 x 2). As the Tenant has been fully compensated for the rent paid for July 2018 when the other occupants left the unit, and as the Tenant has not provided evidence of any greater loss associated with the occupants moving out of the unit, I find that the Tenant is not entitled to any further compensation and I dismiss the claim for \$2,100.00.

Section 26 of the Act provides that a landlord must not seize any personal property of the tenant unless the tenant has abandoned the rental unit and the landlord complies with the regulations. Section 24(1)(a) of the Regulations provides that a landlord may consider that a tenant has abandoned personal property if, inter alia, the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended. Based on the undisputed evidence that the Tenant left

personal property on the residential property after the Tenant vacated the unit and at the end of the tenancy, I find that the Tenant abandoned the property.

Section 24(3) of the Regulations provides that if personal property is abandoned the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part. Section 25 of the Regulations provides the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that the property has a total market value of less than \$500.

I consider the Tenant's evidence that he did not infer that the Landlord could dispose of the property to be inconsistent with the Tenant's evidence that he never followed up with the Landlord after August 14, 2018 to collect any further of his property that was left at the unit. Given the Landlord's supported evidence that the Tenant told the Landlord to deal with the personal property left at the unit after the tenancy ended or after the Tenant moved out, considering the Landlord's evidence that the remaining property was garbage, and given that the Tenant did not provide any evidence of the value of the items left behind, I find on a balance of probabilities that the abandoned personal property was valued less than \$500.00 and that the Landlord had the right to dispose of this property. As a result I find that the Tenant is not entitled to return of its personal property and I dismiss this claim.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$3,600.00**. 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: September 5, 2018

Residential Tenancy Branch