



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("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.

Tenant CH (the "tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, the landlord confirmed that he had received the tenant's application and evidence. As the landlord did not raise any issues regarding service of the application or the evidence, I find that the landlord was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Landlord's Evidence

Pursuant to Rule 3.15 of the Residential Tenancy Branch Rules of Procedure, a respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch. At the outset of the hearing, the landlord testified that he did not serve his evidence to the tenant. Because the landlord did not serve his evidence and the tenant did not receive the landlord's evidence, I have not relied on it to form any part of my decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenant and his former girlfriend, the co-tenant began this tenancy on May 1, 2017 on a fixed term until May 1, 2018. Rent in the amount of \$900.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$900.00 at the start of the tenancy, which the landlord still retains in trust.

The relationship between the tenant and the co-tenant began to deteriorate. In early January 2018 the tenant left the unit and stayed with a friend for a few weeks. The tenant returned on January 22, 2018.

The tenant testified that upon his return, he discovered the lock code had been changed, his belongings were in the landlord's recreational vehicle and that the tenancy agreement signed as a couple was terminated. The tenant contends that he was illegally evicted and as a result seeks the following monetary compensation;

Item	Amount
Security Deposit	\$450.00
Hotel Room January 22 – February 1	\$472.13
Rental Difference x 3	\$450.00
Lost Revenue	\$1,476.67
Total Claim	\$2,848.80

The tenant seeks the return of half the security deposit as it is his position that he paid half and the co-tenant paid half. The tenant seeks reimbursement of the hotel costs he incurred from January 22, 2018 to February 1, 2018. He testified that it was the least expensive accommodation he could find on such short notice. The tenant has submitted a hotel receipt in support of his claim. The tenant testified that he secured a new tenancy effective February 1, 2018 however the rent was \$150.00 more than his monthly contribution for this tenancy and he therefore seeks the difference for the three months left on the fixed term. In an effort to support his portion of this claim, the tenant submitted text messages between him and his new landlord. Lastly, the tenant claims he was unable to work during the period he was locked out and seeks to recover lost revenue. The tenant submitted his 2017 income statement and calculated 7 days of lost

revenue. The tenant also seeks to recover the \$100.00 filing fee for this application from the landlord.

In reply, the landlord testified that in early January 2018, the co-tenant contacted him and told him that the tenant had ended the relationship and had left. After some time, the landlord agreed to have the co-tenant move the tenant's belonging into the landlord's parked recreational vehicle. The landlord understood that the co-tenant feared for her safety and in an effort to assist her, the landlord agreed to allow the co-tenant to change the lock code. The landlord testified that the police were involved and that the co-tenant's parents even stayed in the unit to ensure her safety. The landlord testified that on February 1, 2018 a 10 Day Notice to End Tenancy was posted to the rental unit door and emailed to the tenant. Following this, the landlord entered into a new written tenancy agreement with the co-tenant only. The tenant retrieved his belongings from the recreational vehicle sometime in February.

Analysis

Section 24 of the *Regulation* establishes that a tenant who has not ordinarily occupied and paid rent for a continuous period of one month or has removed substantially all of his property and has given the landlord oral or written notice that he will not return to the unit, has in all effect abandoned the unit.

The evidence before me indicates, the tenant was away for less than a month, left most belongings in the unit and did not give the landlord notice that he would not be returning. For these reasons, I find the tenant did not abandon the unit.

The *Act* provides limited avenues that allow a landlord to end a fixed term tenancy, such as cause, written agreement by both parties or for family violence. The 10 Day Notice for unpaid February rent was issued February 1, 2018. Rent cannot be considered unpaid or late until February 2, 2018; the day after rent is due. Therefore I find this notice is of no force or effect and that the tenancy did not end on the basis of cause. The parties did not provide a written mutual agreement to end tenancy; therefore I find the tenancy did not end on this basis. In order to end a fixed term tenancy for family violence, a tenant must give one month's written notice and a confirmation statement completed by a person designated under the *Regulation*. The landlord provided no such evidence from the co-tenant; therefore I find the tenancy did not end on the basis of family violence.

A landlord may not deny a tenant access to a rental unit by changing the lock code; prohibitions on changes to locks are bound by section 31 of the *Act*. Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on May 1, 2018. I find that the tenant was entitled to access the unit upon his return on January 22, 2018 and that the landlord's actions prevented the tenant from doing so. Accordingly I find the landlord ended the tenancy on January 22, 2018, contrary to *Act*.

In relation to the wrongful eviction, Residential Tenancy Policy Guideline #16 suggests that the purpose of compensation is to put the person who suffered the loss in the same position as if the loss had not occurred. Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

I am satisfied that the landlord breached the *Act*, when they allowed the co-tenant to change the lock code and effectively locked the tenant out of the unit.

Based on the evidence before me and the balance of probabilities, I find the tenant had no alternative but to rent a hotel room between January 22, 2018 and February 1, 2018. I find the tenant has substantiated his claim with receipts and that the tenant mitigated his loss by securing a rental for February 1, 2018. Therefore I find the tenant is entitled to recover \$472.13 in hotel expenses.

I find the tenant incurred a rental increase as a direct result of the landlord's breach of the *Act*. Based on the submitted text messages, which establish a new monthly rent of \$600.00, I find the tenant is entitled to recover the additional \$150.00 he paid in rent between February 1, 2018 and the end of the fixed term, May 1, 2018. In total, I find the tenant is entitled to \$450.00 for the rent increase.

In regards to the tenant's claim that he lost revenue as a result of the illegal eviction, I find the tenant has provided insufficient evidence to substantiate this claim. Although the evidence has established the tenant's belongings were inaccessible, the tenant failed to establish what belongings were necessary to conduct his work. For this reason, I dismiss this portion of the tenant's claim, without leave to reapply.

Residential Tenancy Policy Guideline #13 sets out that a security deposit is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may apply for arbitration for return of the full deposit. Based on the evidence before me and the testimony of the parties, I am satisfied the landlord has retained the security deposit in relation to this tenancy and that neither tenant agreed in writing to allow the landlord to retain it. Therefore, I order the return of the full deposit to the tenant, in the amount of \$900.00.

As the tenant was successful in his application I find the tenant is entitled to recover the filing fee in the amount of \$100.00 from the landlord, for a total award of \$1,922.13.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,922.13 for the following items:

Item	Amount
Security Deposit	\$900.00
Hotel Room January 22 – February 1	\$472.13
Rental Difference x 3	\$450.00
Filing Fee	\$100.00
Total Claim	\$1,922.13

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: October 29, 2018

Residential Tenancy Branch