



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both parties attended the hearing and gave sworn testimony. The tenant filed an Application dated July 13, 2018 and the landlord confirmed it was served to them by registered mail. I find the documents were served pursuant to section 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 28 and 67 for significant disturbance of their peaceful enjoyment and for negligence of the landlord to do maintenance and repairs;
- b) For a doubling of deposits as a condition inspection was not done by the landlord; and
- c) For a refund of overpaid rent for 3 months in 2014.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that the landlord neglected to do repairs and maintain the property? Has he proved the landlord significantly disturbed their reasonable enjoyment? Has he proved that he overpaid rent in 2014 and he should have deposits doubled because the landlord allegedly did not do a condition inspection report? If so, to how much compensation has he proved entitlement?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. They agreed that the tenancy commenced April 1, 2013, that monthly rent was then \$1300 and a security deposit of \$650 was paid. They agreed the rent was raised to \$1336 in April 2014 but the tenant said he was not served the requisite 3 month Notice of the Increase of Rent but he paid it from April 1, 2013. He said he overpaid the rent then by \$36 a month for three months. He agreed the landlord had served him the 3 month Notices of Increase in subsequent years. The landlord said he is an experienced landlord, it is his practice to serve the 3 month

Notices in time for the annual increase, in this case in January, but he cannot remember the details from 2014. He said the tenant never paid the increase prematurely but on time including in 2014.

The tenant claims in total \$22, 948. In his application is a written summary describing his claim. He states the rent should be reduced by \$500 a month for 64 months as compensation for the landlord denying them peaceful enjoyment of their suite. They were deprived of peaceful enjoyment due to the landlord's constant threats, bullying and harassment with gestures of physical violence. This would include the fact that their unit is only 740 sq. ft. and it was advertised as 960 sq. ft. which is misleading advertising. He also alleges the landlord failed to do maintenance as required. He also requests doubling of the deposits with interest amounting to \$2800 as the landlord did not complete and sign the condition inspection reports. He also states the first illegal increase of \$36 a month for three months impacted subsequent increases and he should have the appropriate refunds with interest (between \$960 to \$36,000). He also notes they suffered mental anguish and extra expenses they incurred due to the landlord's refusal to accept a prior Decision where the landlord was not successful in obtaining an Order of Possession pursuant to a 10 Day Notice to End Tenancy. He notes they made many attempts to move but were unsuccessful due to finding no savings and seeing the disadvantages of moving. They had a child in a nearby school.

The landlord denied any disruption of the tenant's peaceful enjoyment by him or relatives. He denies ever threatening the tenant. He said the tenant was very demanding in asking for repairs, he never provided written requests but the landlord tried to accommodate his verbal demands. He said he fixed screens, the unit had venetian blinds and when the tenant complained it was too bright, he installed curtain rods so the tenant could install curtains if he wanted. The venetian blinds were not broken but the turning rod on them was not working properly so it was fixed. He said the move-in report was done quickly and nothing was noted on its face but the tenant wrote on the bottom about the venetian blinds. The landlord said he replaced the master bedroom blind for it was too wide. The tenant said the landlord admitted he installed curtain rods so this is evidence the blinds did not work; he said his wife made the curtains and he charged the landlord \$80. He said the landlord's contractors were poor workmen. The landlord denies this and said he paid the contractors for work was done to satisfaction. The tenant also alleges there was bad management and his child's bike was stolen.

Analysis

As pointed out to the parties at the commencement of the hearing, this is the tenant's application and I was declining to hear evidence from the landlord concerning any claim they might have for damages. They would have to file their own Application.

I have considered all of the evidence relevant to the tenant's claim although not all of it is referenced in my Decision. As noted to the tenant, the onus is on him to prove on a balance of probabilities his claim.

I find awards for compensation are provided in sections 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. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the *Act* does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the *Act*, the regulations or a tenancy agreement.

I have carefully considered all of the evidence submitted by the tenant orally and in writing. I find insufficient evidence to support his claim. I find insufficient evidence to show that the landlord violated the *Act* or tenancy agreement in any way. The weight of the evidence is the landlord maintained the property and did repairs which were requested by the tenant. I find the photograph supplied by the tenant alleging it is of a broken venetian blind appears to be a blind pulled up incorrectly at one end. This would support the evidence of the landlord that one of the control sticks was not working and he repaired it. I dismiss this portion of his claim against the landlord for negligence in maintenance.

I find insufficient evidence that the landlord significantly interfered with the tenant's reasonable enjoyment. The landlord denied that he or relatives were making threats, harassing or bullying the tenant. I find the tenant provided insufficient evidence to support his allegations as no police were called, there was no record of complaints or

reports of harassment to the landlord or management. I dismiss this portion of his claim.

I find in a previous hearing dated July 26, 2018 for non payment of rent, the landlord did not obtain an Order of Possession or a monetary order for he made a technical error in not signing the Notice to End Tenancy. Before the tenant got a copy of the Decision, he served a Notice to End his tenancy by August 1, 2018 and then changed it to July 31, 2018. I find he moved out on July 25, 2018, returned the keys and signed a hand written document stating he got \$250 returned for the key deposits. They both agreed the \$650 security deposit was returned at the same time for a total of \$900. The tenant alleges that \$250 is only a partial refund of the key deposit and requests it doubled. On the condition inspection report it is noted an extra key had been added for the tenant's son and all keys were returned. I find insufficient evidence that the tenant paid deposits of more than \$250 for the keys. The amount is not noted on the tenancy agreement or the condition inspection report and he did not list what he paid and for what key and the landlord said it was only \$250. I dismiss this portion of his claim.

Furthermore, the tenant submitted a further complaint against the landlord alleging he had locked him out illegally and he was not able to retrieve his mail after July 26, 2018 including the Decision of the arbitrator. I find the tenant pre-empted the Decision himself by giving a Notice to End his tenancy and returning the keys. I find the landlord did not lock him out, he ended the tenancy himself. I dismiss his claim for pain and suffering related to his own actions.

In relation to the tenant's claim for overpayment of rent, I find insufficient evidence to support his claim. He did not supply a copy of the 2014 Notice of Increase to show when it was signed and served. I find the landlord supplied a Notice of Rent Increase for 2015 noting the rent was established on April 1, 2014, it was signed on March 18, 2015 and stated the new increase would be effective on July 1, 2015. As this Notice conforms to the legislative requirements, I find it more likely that the 2014 Notice also did. I dismiss this portion of the tenant's claim as there is insufficient evidence to support his claim.

The portions of the Policy Guidelines submitted by the tenant concerning the condition inspection report refer to the ability of the landlord to claim against the deposit. As the landlord has returned the security deposit and not claimed against it, I find it is not relevant to this case.

Much of the tenant's further submission is a defence against damage claims by the landlord. As there is not a damage claim by the landlord before me, I decline to comment on the defence. If and when the landlord files an Application to claim damages, the tenant would at that time submit his defence against them.

Conclusion:

I dismiss the tenant's application in its entirety without leave to reapply. His filing fee was waived.

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: November 20, 2018

Residential Tenancy Branch