



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, PSF, OLC, FFT

Introduction

This hearing was scheduled to deal with the tenant's application for a Monetary Order for damages or loss under the Act, regulations or tenancy agreement; authorization to reduce rent for services or facilities agreed upon but not provided; orders for the landlord to comply with the Act, regulations or tenancy agreement; and, orders for the landlord to provide services or facilities required by the tenancy agreement or the law.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure. Both parties stated they have had multiple dispute resolution proceedings since April 2018 or May 2018. Both parties attempted to speak of other matters, previous dispute resolution hearings and decisions, and evidence presented for other hearing. As each case turns on its own merits and I instructed the parties to limit their submissions to the relevant primary matter before me, which is the tenant's loss of use of the shed and removal of the tenant's possessions from the shed.

The tenant submitted that he send his hearing package and evidence to the landlord via registered mail on November 6 and November 13, 2018. The landlord could not recall whether he received the tenant's packages, pointing out that he has been served many times by the tenant for various matters and disputes. The tenant provided the registered mail tracking numbers and I confirmed that the packages were delivered. I also noted that the landlord had provided a written response to the tenant's claims. As such, I was satisfied the landlord was served with the tenant's hearing documents and evidence and I informed the parties that I would admit the tenant's evidence and proceed with the hearing.

As for the landlord's written response, the landlord stated he could not recall if he served it to the tenant. The tenant stated he did not receive a response from the

landlord for this matter. As such, I did not admit the landlord's written response. Rather, the landlord was given the full opportunity to be heard orally during the hearing.

Issue(s) to be Decided

1. Is it necessary and appropriate to order the landlord to provide the tenant with a service or facility (use of the shed) or other orders for compliance?
2. Has the tenant established an entitlement to reduce rent in the amount of \$15.00 per day for loss of use of the shed, as requested?
3. Has the tenant established an entitlement to compensation of \$2,200.00 for retaliation, loss of enjoyment, devaluation of tenancy, and aggravated damages, as claimed?
4. Has the tenant established an entitlement to compensation of \$250.00 for anticipated costs to remove his possessions that were once stored in the shed from the deck, as requested?
5. Has the tenant established an entitlement to \$7,500.00 for anticipated loss of the value of the possessions that were stored in the shed, as claimed?

Background and Evidence

Under an oral agreement, the tenancy started on October 12, 2012. No security deposit was paid or collected. The rent had been \$1,362.00 per month before it was reduced to its current rate of \$800.00 by way of two previous dispute resolution proceedings.

The rental unit is on the ground floor of a house and includes two bedrooms. The tenant uses one of the bedrooms as a storage room. The landlord and his daughter reside in the upper portion of the house. Located on the residential property is an unheated shed (herein referred to as "the shed").

The landlord has been using the shed to store gardening tools and equipment, Christmas decorations, and the like. The tenant had been storing boxes in the shed since early on in the tenancy; however, the parties were in dispute as to whether the parties had discussed or agreed upon the tenant's use of the shed when the tenancy formed or at any later time. The tenant testified the landlord told him to use the shed. The landlord denied that to be true and stated the tenant just started using the shed on his own accord. The landlord stated he had taken issue with the tenant storing a scooter in the shed but did not take issue with the boxes being in the shed until he wanted to regain the space in October 2018.

It was undisputed that on or about October 12, 2018 the landlord sent the tenant an email stating that he had removed the tenant's boxes from the shed and placed them on the tenant's deck. The tenant's security camera captured the landlord placing the boxes on the shed and portions of the security camera footage were provided as evidence.

The tenant stated that after the landlord placed the boxes on his deck, the tenant proceeded to place tarps on the boxes. On November 6, 2018 the tenant made this Application and on November 11, 2018 the tenant emailed the landlord to request the landlord put the boxes back in the shed and compensate him \$15.00 per day for the period of time the boxes are not in the shed.

The landlord stated that the shed used to be unlocked; however, after he removed the tenant's boxes from the shed he placed a lock on the shed. I heard that the boxes still remain on the deck, under two tarps, as of the date of this hearing

Tenant's request for orders for services or facilities and compliance

During the hearing, the tenant was uncertain as to whether he wanted me to issue an order to the landlord so that he could regain use of the shed. I pointed the tenant had made such a request in his written submission. The tenant withdrew his request to regain use of the shed. Rather, the primary remedy the tenant seeks is monetary compensation.

As for the tenant's request for orders for compliance, the tenant stated the landlord breaches the Act every day and he wants an order for the landlord to comply with the Act. I informed the parties that both parties are required to comply with the Act and that I would not issue a non-specific order for compliance.

Tenant's request for rent reduction

The tenant seeks a rent reduction of \$15.00 per day for loss of use of the storage shed. The tenant did not provide documentary evidence to demonstrate the cost of a storage facility or the value of a tenancy with or without storage facilities. The tenant stated that he determined \$15.00 per day to be appropriate based on the hundreds of other Residential Tenancy Branch decisions he read. The tenant also submitted that he wanted the award to be large enough to deter the landlord from continuing to thumb his nose at the law.

The landlord was of the position there was no agreement for the tenant to use the shed although he was aware of the tenant's possessions being stored in there for years. The landlord stated that he removed the tenant's boxes because he needs the storage space for his own use. The landlord acknowledged that he did not give the tenant one month of advance notice that he would terminating the tenant's use of the shed because the tenant disputes everything he gives him.

The landlord stated that that the quantity of possessions removed from the shed is not great and that storage for that volume of property would probably cost \$30.00 or \$40.00 per month.

Tenant's request for compensation for retaliation, loss of enjoyment, devaluation of tenancy, and aggravated damages

The tenant requested compensation of \$2,200.00 for all of the above described losses in one lump sum. The tenant did not provide a detailed calculation as to how he calculated that amount with his application or written submissions. The tenant explained during the hearing that he determined this amount by looking at hundreds of other Residential Tenancy Branch decisions.

Both parties were of the view that the other party is retaliating against the other ever since the landlord served the tenant with a Notice to End Tenancy earlier this year.

The tenant alleged the landlord has launched a campaign against him in retaliation for not succeeding in evicting him, including termination of services or facilities.

The landlord alleged the tenant is retaliating against the landlord for trying to end the tenancy by filing multiple monetary claims against him.

Tenant's request for anticipated cost to haul away boxes and damage to his property

The tenant submitted that he cannot remove the boxes from the deck because he has back problems. The tenant asserts that the contents of the boxes are now destroyed by the weather, mould, and possibly pests, including deer ticks. The tenant anticipates that a handyman would charge him \$250.00 to haul the boxes. The tenant estimated this amount based on hiring a handyman in the past.

The tenant submitted that the value of the contents in the boxes to be approximately \$7,500.00. The tenant did not provide a detailed calculation to demonstrate how he arrived at the sum of \$7,500.00. Upon my questioning during the hearing, the tenant explained that there were hundreds of magnetic tapes that cost between \$2.00 and \$30.00 each. The tenant stated that the tapes contain content that includes audio/video recordings that go back to his childhood, and evidence. In addition, there was a costume that he valued at \$150.00 to \$200.00 and some office equipment.

The landlord stated he did not look in the boxes when he moved them. However, the landlord was of the position that there is nothing of value in the boxes. The landlord pointed out that the tenant has a storage room in the house and that if the contents of the boxes were valuable they would have been stored in the house rather than an unlocked, unheated, dark, cold and moist shed. The landlord submitted that the shed is suitable for storing things like equipment, garden tools and Christmas decorations. If the tenant did store items that were sensitive to moisture in the shed the items would have been destroyed the first winter they were in the shed.

The landlord doubted that moving the boxes would cost \$250.00 and estimated a more reasonable amount would be closer to \$100.00.

Overall, the landlord was of the position the tenant's claim is exorbitant and outlandish.

Both parties were in dispute as to whether magnetic tape is sensitive to cold temperatures; however, neither party provided corroborating evidence with respect to their respective position.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

The first issue for me to determine is whether the tenant was entitled to shared use of the shed to store some possessions that the landlord also uses for storage of equipment, garden tools and the like.

Storage facilities are by definition under section 1 of the Act a "service or facility" if the storage facility is "provided or agreed to be provided by the landlord to the tenant of a rental unit."

Section 13 of the Act requires that all tenancy agreements are in writing and among other things, the tenancy agreement is to reflect the services or facilities included in rent. Unfortunately, the parties did not prepare or execute a written tenancy agreement in this case and now they are in dispute as to whether there was an agreement for the tenant to have use of the shed as a service or facility that was to be included in rent.

All tenancy agreements between a landlord and a tenant with respect to a rental unit and residential property are subject to the Act, unless specifically exempted. The definition of “tenancy agreement” in section 1 of the Act includes tenancy agreements entered into orally, in writing, and by way of implied or express terms. Therefore, in this case, the parties are bound by the terms of their oral agreement, and including any implied or express terms.

I was provided opposing testimony that the parties had expressly discussed and agreed that the tenant may use the shed for storing his items. However, it was undisputed that the tenant had been using the shed to store some boxes since the beginning of the tenancy. The landlord also acknowledged that the tenant may have been entitled to 30 days of notice to terminate his use of the shed which is consistent with the shed being a service or facility provided to the tenant. Accordingly, I find on the balance of probabilities that there was at least an implied term of tenancy that the tenant could use a reasonable amount of the storage shed. Therefore, I find that shared use of the storage shed was a service or facility included in rent.

Section 27 of the Act provides for the manner in which a landlord may terminate a service or facility. In this case, I accept the landlord's position that the tenant's shared use of the unheated storage shed is not an essential service or facility, in that it is not essential that the tenant have the shared use of the shed in order to use the rental unit as living accommodation. Therefore, I find the landlord was obligated to comply with section 27(2) of the Act in order to terminate the tenant's use of the shed. Section 27(2) provides:

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In this case, the landlord did not issue the tenant a 30 day notice before terminating the use of the shed. It appears the landlord was aware of the 30 day notice requirement as he spoke of the requirement on his own accord during the hearing. Nor, did the landlord offer a rent reduction for the loss of use.

The tenant originally requested the storage facility to be restored; however, he withdrew that request during the hearing and seeks an ongoing rent reduction of \$15.00 per day plus other monetary awards. Since the tenant withdrew his request for an order for return of the storage facilities, I make no such order to the landlord and I proceed to consider the tenant's monetary claims.

Tenant's request for rent reduction

I find the tenant's request for compensation of \$15.00 per day (which equates to approximately \$450.00 per month) for loss of use of a portion of the unheated shed appears excessive and it is unsupported by corroborating evidence that would demonstrate his tenancy is devalued to such an extent. Upon review of the tenant's video evidence of the boxes that were removed from the storage shed I find it highly unlikely it would cost \$450.00 to store that number of boxes. The tenant did not present evidence such as storage rental locker rates or other evidence that would demonstrate the difference in rents for rental units that offer storage versus those that do not. Also, awards are intended to be restorative, not punitive.

The landlord suggested it would cost \$30.00 to \$40.00 per month to store the number of boxes the tenant had in the shed and I find that suggestion more reasonable.

Therefore, rather than deny the tenant's claim for a rent reduction entirely because the loss put forth by the tenant was not sufficiently supported, I have relied upon the figures provided by the landlord and I award the tenant a rent reduction of \$30.00 per month starting in the month of October 2018.

Tenant's request for compensation for retaliation, loss of enjoyment, devaluation of tenancy and aggravated damages

With respect to the tenant's request for \$2,200.00 for retaliation, loss of enjoyment, devaluation of tenancy, and aggravated damages I find the tenant did not sufficiently set out this claim.

A monetary claim is to be accompanied by a detailed monetary calculation as provided in Rule 2.5 of the Rules of Procedure. Also, it would appear unclear as to whether the

tenant is seeking further compensation for something already sought in another part of his claim. To illustrate, the tenant requested compensation of \$15.00 per day for loss of use of the storage facilities in the section above but also requested compensation for “devaluation of tenancy” in this section. Also, loss of quiet enjoyment, which may include retaliatory conduct, is payable where a landlord breaches section 28 of the Act and aggravated damages may be awarded where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. As provided in Residential Tenancy Branch Policy Guideline 16:

Compensation for Damage or Loss “Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.”

I find the tenant did not sufficiently set out or break down the compensation he seeks for each component of this claim. Therefore, I do not consider it further and it is dismissed.

As an aside, from what was presented to me, it is clear that the tenancy relationship has soured and the parties have an acrimonious relationship. I am of the view that it is likely that both parties are retaliating against the other to some extent. Since the tenancy is still in effect at this time, with a view to future disputes, I strongly encourage the parties to conduct themselves in a manner that complies with the Act and in a manner that fosters a more cohesive tenancy relationship which includes ceasing actions that are intended to aggravate the other party.

Tenant’s request for anticipated cost to haul away boxes and damage to his property

The tenant alleges that the landlord’s actions of removing his boxes from the shed and putting them on the deck resulted in damage to the content of the boxes and are now destroyed. The tenant places a value of \$7,500.00 on the contents. The tenant did not provide a detailed calculation to demonstrate how he arrived at \$7,500.00 as required under Rule 2.5 of the Rules of Procedure.

The landlord was of the position the contents were likely already destroyed by being stored for years in an unheated, dark and cold storage shed and that the tenant could have stored the items in the storage room he has in his rental unit.

Upon review of the video evidence I see what appear to be papers, items in plastic bags that are not revealed, several cassette and VHS tapes, and the costume the tenant

referred to, among other things that were not identifiable. Some of the papers do appear mouldy; however, other items that are fabric do not. Most of the tapes are in cases but the tenant does not demonstrate that the tapes are no longer functional. I find the video evidence presented or other opposed evidence does not satisfy me that the contents of the boxes were destroyed by the sole actions of the landlord and had a value of \$7,500.00. Also of consideration is that the tenant was aware of the landlord placing the boxes on the deck, which was caught on surveillance video and shows that the landlord did so on a sunny day, yet, the tenant did not have the boxes relocated to a dry area so as to mitigate losses. The tenant claims to have a bad back but did not provide medical evidence of such or explain how the boxes got into the storage shed. Even if the tenant had to hire the services of a handyman to move the boxes at a relatively inexpensive cost it would seem to me that cost would be a prudent expenditure if in fact the content of the boxes had a value of \$7,500.00.

In light of the above find I am not satisfied that the landlord's actions caused the tenant to suffer a loss of \$7,500.00 worth of property and I dismiss this portion of the tenant's claims.

The tenant's request to recover \$250.00 to haul the boxes away is also unsupported to corroborating evidence. However, in recognition the tenant is left with the task of moving the boxes I find it appropriate to recognize he should not have to do that and that he may have to enlist the services of helper, I award the tenant a nominal award of \$100.00.

Filing fee

The tenant's application had some merit and I award the tenant recovery of the \$100.00 filing fee.

Authorization for tenant to make deductions from rent

In light of all of the findings, I authorize the tenant to deduct the following from rent payable for January 2019: \$120.00 as the rent reduction for loss of the storage facility for the months of October 2018 through January 2019, plus \$100.00 as compensation to deal with removal of the boxes from the deck; and, \$100.00 for recovery fee. Starting February 1, 2019 onwards the tenant is authorized to deduct \$30.00 per month for loss of use of the storage shed.

Conclusion

The tenant had limited success in this application and has been authorized to make a deduct in the total of \$320.00 from rent for the month of January 2019; and, starting February 1, 2019 the tenant may deduct \$30.00 per month for loss of use of storage facilities.

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 14, 2018

Residential Tenancy Branch