Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, OPT

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") and an Amendment to an Application for Dispute Resolution (the "Amendment") that were filed by the Tenant under the *Residential Tenancy Act* (the "*Act*"), seeking:

- Compensation from the Landlord for loss or other money owed;
- An order for the Landlord to comply with the *Act,* regulation, or tenancy agreement; and
- An Order of Possession for the rental unit.

The hearing was originally convened by telephone conference call on October 23, 2018, at 9:30 A.M. and was attended by the Tenant, the Landlord, and the Agent for the Landlord (the "Agent"), all of whom provided affirmed testimony. The hearing was subsequently adjourned due to time constraints. An interim decision was made on November 16, 2018, in which several matters were addressed and findings of fact made. The reconvened hearing was set for December 17, 2018, at 11:00 A.M. and a copy of the interim decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the "Branch") in the manner requested during the hearing. For the sake of brevity, I will not repeat here the matters discussed or the findings of fact made in the interim decision. As a result, the interim decision should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on December 17, 2018, at 11:00 A.M. and was attended by the Tenant, the Landlord, and the Agent, all of whom provided affirmed testimony. The hearing proceeded based only on the monetary claims by the Tenant, which were the remaining matters not already determined in the interim decision dated November 16, 2018, and the parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing in relation to the Tenants monetary claims.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be sent to them at the e-mail addresses provided in the hearing.

Preliminary Matters

At the outset of the hearing I identified that the Tenant had submitted a document for consideration after the close of the original hearing, despite explicit direction both in the original hearing and in the interim decision, that the adjournment is not an opportunity for either party to submit additional documentary or digital evidence for consideration at the reconvened hearing.

As a result, I advised the parties that this document would not be considered in rendering my decision but that the Tenant could provide oral testimony regarding the contents of this document during the hearing for my consideration.

Issue(s) to be Decided

Is the Tenant entitled to compensation from the Landlord for loss or other money owed?

Background and Evidence

The parties agreed that two tenancy agreements existed between them, the first of which commenced in November of 2016, listing the Tenant and two other persons as tenants, and the second of which commenced on January 1, 2018, listing the Tenant as the only occupant/tenant. Both tenancy agreements required that rent in the amount of $1,950.00 be paid on the first day of each month. Copies of both tenancy agreements are also included in the documentary evidence before me for consideration by the Tenant.

During the hearings it was agreed that the Landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") in October of 2017, which the other two original tenants voluntarily complied with, subsequently moving out at the end of October, 2017. The parties agreed that the Tenant chose to remain in the rental unit after the other tenants vacated and to file an Application disputing the Two Month Notice, which was later withdrawn by mutual agreement when a settlement

agreement outside of the dispute resolution process was reached and new tenancy agreement was entered into between only the Tenant and the Landlord, effective January 1, 2018.

The Tenant stated that at the time the Two Month Notice was served, he was only responsible for $550.00 of the $1,950.00 in rent and that the other two tenants were responsible for the rest. The Tenant argued that the Landlord's Two Month Notice was invalid as he was simply trying to evict them for failing to pay for an illegal rent increase due to his discovery of the Tenant's cannabis garden, and that the service of this invalid Two Month Notice caused his roommates to move out. As a result, the Tenant stated that he was left responsible for the full $1,950.00 in rent for seven months from November of 2017, until May of 2018, after which he was able to get a new roommate. As a result, the Tenant sought compensation from the Landlord in the amount of $9,800.00; $1,400.00 per month from November 1, 2017 - May 31, 2018. In support of this testimony the Tenant submitted recordings of an interaction between himself and the Landlord as well as substantial documentary evidence primarily in the form of self-authored submissions.

The Landlord and Agent denied that the Landlord attempted to unlawfully increase the Tenants rent and stated that in any event, this alleged rent increase was never imposed. The Landlord and Agent stated that if the other occupants wished to dispute the Two Month Notice that option was available to them but instead they voluntarily complied, which is not the responsibility of the Landlord. Further to this, the Landlord and Agent stated that there has never been any finding that the Two Month Notice was invalid and that although the Tenant filed an Application seeking to dispute the Two Month Notice, the Tenant withdrew their Application disputing the Two Month Notice and the Landlord withdrew the Two Month Notice as a settlement agreement was reached between them outside of the dispute resolution process.

The Landlord and Agent stated that the $1,950.00 in rent payable under the original tenancy agreement was due, in full, each month, regardless of which of the tenants paid it or how many of the Tenants remained in the rental unit. The Landlord and Agent stated that the Tenant is therefore not entitled to any rent reduction or payment for November or December of 2017, regardless of the fact that the other tenants moved out as he remained living in the rental unit. The Landlord and Agent stated that the Landlord is also not responsible to reimburse the Tenant for any rent paid for January of 2018 onwards as the Tenant entered into a new tenancy agreement in only his name, effective January 1, 2018, wherein he agreed to pay $1,950.00 in rent each month. As a

result of the above, the Landlord and Agent denied that the Landlord is responsible for any of the $9,800.00 sought by the Tenant.

Although the parties disputed whether the Tenant has authorization to cultivate cannabis in the rental unit, both parties agreed that the Tenant uses the garage to cultivate cannabis. The Tenant stated that he has a licence to cultivate medical cannabis and is therefore permitted to cultivate cannabis in the rental unit; however, he did not point to any documentary evidence before me showing that he either has approval to cultivate medical cannabis or that he is permitted to do so in the rental unit. In any event, the Tenant stated that during a routine inspection of the property, the Landlord discovered the cannabis being grown by the Tenant and asked if the electrical components and equipment associated with this cultivation had been inspected by an electrician. The Tenant testified that it had not and that he advised the Landlord of this. The Tenant stated that the Landlord told him that he needed to have it inspected by an electrician, and he therefore hired an electrician to inspect the electrical components and equipment associated with the cultivation of cannabis in the garage. The Tenant stated that as a result of this inspection, the electrician was required to mount a timer with external plugs to a wall stud but that no other modifications were required as this timer, which he already owned, simply required mounting and plugged directly into an already existing dryer plug. The Tenant stated that as the Landlord required that the electrical equipment be inspected by an electrician, he should be responsible for this cost and therefore sought reimbursement of $140.00 paid by him to the electrician. In support of his claim the Tenant submitted an invoice for the electrical work.

The Landlord and Agent acknowledged that upon discovering that the Tenant was cultivating cannabis in the garage, the Tenant was advised that any electrical work done in relation to his cannabis cultivation required review and approval by a qualified electrician. However, the landlord and Agent denied that the Landlord is responsible for this cost as the cultivation of cannabis in the rental unit was the Tenant’s decision, that the cultivation of cannabis and the associated electrical wiring were done without the Landlord’s consent, and that the cultivation of cannabis is for the use and benefit of the Tenant and not the Landlord. Further to this, the Landlord testified that the Tenant was never advised that the Landlord would pay for this cost. Although the Tenant acknowledged that the Landlord never agreed to pay for this cost, he reiterated that the Landlord should still be responsible for it as he wanted the electrician to review and approve the wiring. The Tenant also stated that he had approval to make any changes or modification to the rental unit he wished to make, which the Landlord denied. When asked, the Tenant was not able to point to any documentary or other evidence in support of this testimony.

The Tenant sought $560.00 in costs associated with filing and serving this Application, as well as two other Applications, as well as evidence with the Branch, including $90.00 for parking and gas, $29.00 for costs incurred at a print and stationary store, $282.00 for the cost of a printer and ink, $90.00 for the cost of USB devices, $70.00 paid to friends or family member for rides to or from the physical Branch location, $60.00 in gas and parking costs to attend an advocacy agency, and $58.00 in registered mail costs. The Tenant also sought $59.00 for the cost of replacing rent cheques that were cancelled by one of the other original tenants when they vacated the property in compliance with the Two Month Notice. The Tenant stated that as the Landlord had breached the *Act* by attempting to unlawfully increase the rent and serving an invalid Two Month Notice, he should be responsible for the costs incurred by the Tenant to file and serve the Application as well as the cost of replacing cheques cancelled by his former roommate.

The Landlord and Agent stated that the Landlord should not be responsible for any of these costs as the Landlord has not breached the *Act*, and reiterated that no finding has been made by the Branch that the Two Month Notice was in any way invalid. The Landlord also stated that he is not responsible for the fact that the other tenant cancelled several rent cheques and that this is really between the Tenant and his roommate. Further to this, the Landlord and Agent stated that the Tenant could easily have spent substantially less money on filing and serving his Application and evidence if he had filed online instead of in person at the Branch and used a cost-free service method such as personal service. As a result, the Landlord stated that he should not be responsible for the $619.00 sought by the Tenant.

The Tenant sought $2,375.00 in lost wages for time he claims to have taken off work in order to prepare, file and serve the Application and evidence. The Tenant stated that he had to take between 5-6 hours off work every day for approximately 19 days and that as a result, he lost $2,375.00 in wages at $25.00 per hour. The Tenant stated that he has also subsequently lost this job a job opportunity as a result of his need to dedicate time to this dispute. In support of this claim the Tenant pointed to pages 13 and 103 of his documentary evidence wherein he briefly describes why he believes he is entitled to the lost wages sought and provides a breakdown of the claim including an accounting of the dates and hours taken off work and the wages claimed for that time period.

The Landlord and Agent denied that the Landlord is in any way responsible for these costs as the Landlord has not breached the *Act*, it was the Tenant's choice to file the Application, and there is no reasonable reason for why the Tenant could not have completed all or the majority of the tasks associated with preparing, filing, and serving

the Application and evidence outside of regularly scheduled work hours. Further to this, the Landlord and Agent stated that the Tenant has not even provided any proof of this employment, the wage he claims to have been making at that job or any evidence that he in fact took lost work or wages as a result of the Application.

The Tenant also sought the return of a $500.00 pet damage deposit which he stated was paid to the Landlord but not returned when the tenant who had the pet vacated in October, 2017. The Tenant stated that he subsequently returned this amount to the former tenant and simply wants the Landlord to reimburse him for this cost. The Landlord and Agent denied that any pet damage deposit was ever paid. The Landlord stated that it was discussed at the start of the original tenancy in November of 2016 that a pet damage deposit would be required if any of the tenants were to get a pet, but no pets were agreed upon or present at the start of the tenancy and therefore a pet deposit was not required or paid at that time. The Landlord and Agent stated that no pet deposit was subsequently paid by any of the tenants and as a result, the Tenant is not entitled to the $500.00 sought.

Analysis

Although the Tenant sought monetary compensation in the amount of $17,000.00 in their Application, in the hearing the Tenant provided testimony only in relation to $13,434.00. As a result, I have considered only $13,434.00 in monetary claims by the Tenant.

The Tenant argued that the Landlord is responsible to reimburse him $1,400.00 per month between October 2017 and May 2018, as he did not have any roommates during that time and was therefore responsible for the entire $1,950.00 in rent payable under the tenancy agreements instead of the $550.00 he normally would have contributed while he had roommates. The Tenant argued that the Landlord is responsible to reimburse him these amounts as the Landlord attempted to unlawfully increase their rent and subsequently issued an invalid Two Month Notice which his roommates complied with. However, I do not agree that the Landlord is responsible for this amount. The parties agreed that a Two Month Notice was served and it appears from the documentary evidence and testimony before me for consideration, that the two other tenants listed on the tenancy agreement voluntarily complied with the Two Month Notice instead of exercising their right to dispute it. The Tenant chose not to comply with the Two Month Notice and filed an Application disputing the validity of the Two Month Notice, however, ultimately the Tenant withdrew their Application as an agreement was reached between the Tenant and the Landlord wherein the Two Month Notice was

withdrawn and a new tenancy agreement signed between only the Tenant and the Landlord. As a result, no decision was ever rendered by the Branch in relation to the validity of the Two Month Notice.

At the time the Two Month Notice was served, a tenancy agreement was in force between the Tenant, two other tenants, and the Landlord stating that rent for the entire property was $1,950.00. Tenants are joint and severally liable under the *Ac*t, and section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement. I therefore find that $1,950.00 in rent was still owed to the Landlord each month when the Tenant chose to dispute the Two Month Notice and remain in the property under the original tenancy agreement, regardless of the fact that the other two tenants had vacated the rental property in compliance with the Two Month Notice. As a result I dismiss the Tenant's Application seeking a $1,400.00 reimbursement of rent per month from the Landlord between November 1, 2017, and December 31, 2017, without leave to reapply.

Further to this, I find that the Tenant was also responsible to pay the full $1,950.00 in rent under the tenancy agreement signed by him and the Landlord on January 1, 2018, as he is the only Tenant under that tenancy agreement and it was agreed that rent was $1,950.00 a month. The Tenant's desire not to be responsible for this entire amount, their inability to pay the amount of rent agreed upon in the tenancy agreement or their financial difficulties in doing so without the assistance of roommates, does not impact or change the terms of the tenancy agreement. As a result, I also dismiss the Tenant's Application seeking a $1,400.00 reimbursement of rent per month from the Landlord between January 1, 2018 – May 31, 2018, without leave to reapply.

Although the Tenant stated that the Landlord is responsible to reimburse him for the $140.00 paid by him to an electrician, I do not agree. Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 32 (1) of the *Act* also states that a landlord must provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. However, the amount sought by the Tenant is actually for the cost of an electrician hired by him in relation to the cultivation of cannabis on the property for his own use and benefit. As a result, I fail to see how this cost is related to the Landlords obligations under section 32 of the *Act* or any other section of the *Act* or

regulation. Further to this, the parties confirmed that the Landlord never agreed to pay for an electrician and there is nothing in either of the tenancy agreements that states that payment for an electrician related to the Tenant's cultivation of cannabis is the responsibility of the Landlord. As a result of the above, I am not satisfied that the Landlord breached any section of the *Act*, regulation, or tenancy agreement resulting in the $140.00 loss claimed by the Tenant and as a result, I dismiss the Tenant's claim for reimbursement of this cost without leave to reapply.

The Tenant sought the return of a $500.00 pet damage deposit, however, the Landlord denied that a pet damage deposit was ever paid. the tenancy agreement for the tenancy commencing in November of 2016, states only that a pet deposit will be paid before a pet is permitted, not that any such pet has been permitted or any such deposit has been paid and the tenancy agreement for the tenancy commencing
January 1, 2018, indicates that no security or pet damage deposit were either required or paid. Further to this, the Tenant did not submit any documentary evidence to corroborate that this security deposit had in fact been paid, such as a receipt, copy of a cheque, or bank records. As a result, I am not satisfied, on a balance of probabilities, that a pet damage deposit was ever paid and I therefore dismiss the Tenant's claim for its return without leave to reapply.

The Tenant sought $59.00 for the cost of replacing rent cheques that were originally drawn on a joint account between himself and another Tenant and subsequently cancelled when the other tenant vacated the rental unit in compliance with the Two Month Notice. Although the Tenant sought this amount based on the premise that the Two Month Notice served by the Landlord was invalid because it was only issued due to their failure to agree to an unlawful rent increase, the validity of the Two Month Notice is not a matter to be decided in this Application. Further to this, the parties agreed in the hearings that the Two Month Notice and their associated Applications were previously withdrawn as they had reached settlement and as a result, there is no finding from the Branch that the Two Month Notice in question was invalid. As a result, I find that the Tenant has failed to satisfy me, on a balance of probabilities, that the $59.00 cost sought for the replacement of rent cheques cancelled by another tenant, are the result of a breach of the *Act*, regulation, or tenancy agreement on the part of the Landlord pursuant to section 7 (1) of the *Act*. Further to this, it appears to me that this is truly a matter between the Tenant and a former roommate (who was also a tenant of the rental unit), not the Tenant and the Landlord, as the cheques were in fact cancelled by the other Tenant and not the Landlord. As a result of the above, I therefore dismiss this claim without leave to reapply.

Finally, the Tenant sought $2,375.00 in lost wages for time he stated he had to take off of work in order to prepare, file and serve several claims. Although the Tenant pointed to pages 13 and 103 of his documentary evidence in support of this claim, page 13 is a self-authored typed submission containing only a brief summary of why the Tenant believes he is entitled to the lost wages and 103 is a self-authored account of the days and number of hours the Tenant claims to have lost work due to preparing, filing and serving his claims. The Tenant has submitted no documentary or other evidence establishing that he was employed, that his wage was $25.00 an hour as claimed, or that he did in fact voluntarily take the dates and times claimed off from work in order to deal with this Application. Further to this, even if the Tenant had provided documents in support of his claim that he lost wages due to the filing of the Application, which he did not, I am not satisfied that there is any reasonable reason why the Tenant could not have completed all or the majority of tasks associated with preparing, filing, and serving the Application and evidence outside of regularly scheduled work hours. As a result, I am not satisfied that the Tenant in fact suffered this loss in wages or that he mitigated any such loss as required by section 7 (2) of the *Act* and I therefore dismiss the Tenants $2,375.00 claim for lost wages without leave to reapply.

As I have dismissed the vast majority of the claims made by the Tenant in his Application, I therefore decline to grant the Tenant recovery of the $560.00 sought by him for costs associated with filing and serving the Application without leave to reapply. In any event, I find that the Tenant failed to provide documentary evidence in support of the majority of the amounts claimed. Further to this, I also find that the Tenant failed to mitigate the above noted losses by using an expensive service method when other free or less costly alternatives, such as personal service, were available to him, and by filing his application in person instead of online, requiring multiple and expensive trips to the physical Branch location. As a result, even if the Tenant had been more successful in his Application, I would still have dismissed these costs without leave to reapply as I find that the Tenant failed to either prove the value of this loss on a balance of probabilities or to do whatever is reasonable to minimize this loss as required by section 7 (2) of the *Act*.

Conclusion

The Tenant’s monetary claims are dismissed in their entirety without leave to reapply.

As stated in the interim decision dated November 16, 2018, I find that the vacate clause stated in the current tenancy agreement which commenced January 1, 2018, is

unenforceable and I order that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the *Act*.

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: January 9, 2019

Residential Tenancy Branch