



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNRT, FFT

Introduction

This proceeding dealt with the tenant's application for a Monetary Order for return of the security deposit and monetary compensation for emergency repairs and damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The hearing was held over two dates and an Interim Decision was issued on February 15, 2019. The Interim Decision should be read in conjunction with this decision. As seen in the Interim Decision of February 15, 2019, I found the tenant's application for return of the security deposit was pre-mature and I gave orders to the landlord and dismissed the tenant's request with leave to reapply. Accordingly, the remainder of this decision deals with the tenant's request for a Monetary Order for repairs and damages or loss under the Act, regulations or tenancy agreement.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation from the landlord for repairs made to the property and damages or loss under the Act, regulations or tenancy agreement as claimed?

Background and Evidence

The parties provided undisputed evidence with respect to the following terms of tenancy. The parties executed a written tenancy agreement for a fixed term tenancy set to commence on December 1, 2017. The tenant was required to pay rent of \$1,200.00

on the first day of every month. The tenant moved out of the rental unit on November 1, 2018.

The parties were in dispute as to whether the tenancy was for a fixed term of one year or two years. The landlord submitted that the fixed term tenancy was set to expire December 1, 2018; whereas, the tenant submitted that it was a two year fixed term tenancy agreement set to expire on December 1, 2019. The tenant alleged the landlord altered the tenancy agreement to write an "8" over the "9" in 2019 originally written as the expiry date of the fixed term. The tenant pointed to examples of how the landlord writes an "8" versus a "9" in other portions of the tenancy agreement. The landlord denied forging the tenancy agreement.

In filing this Application, the tenant requested compensation of \$18,000.00, the equivalent to rent for 15 months, for the balance of the fixed term he claims he was deprived of when the tenancy ended early, and moving costs of \$6,000.00. The tenant submitted that he moved to a rental unit that costs twice as much as he was paying at the rental unit. The tenant did not provide the tenancy agreement or other documentary evidence to demonstrate the rent he is currently paying, or documentation to support the amount paid for moving costs.

The tenant also requested compensation of \$4,500.00 for repairs and/or renovations he made to the property. The tenant provided photographs of what appears to be drywall work in progress. The tenant did not provide receipts or invoices for repairs or renovations he made to the property with the exception of invoices for garbage bin rental prepared on invoice sheets used by the company the tenant works for. When I pointed out that the invoices provided do not amount to \$4,500.00 the tenant submitted that it is industry standard to charge \$750.00 to \$1,000.00 for each room renovated and that he renovated 8 areas of the rental unit.

The primary basis of the tenant's claim is that he renovated the basement of the rental unit so that it would be liveable space with the expectation he would reside in the rental unit for several years and the rent would remain the same. The tenant submitted that during the initial inspection of the rental unit the condition of the rental unit was evaluated and the basement needed work to make it a living space. The tenant claims that the agreement between the landlord and the tenant was that if the tenant fixed up the basement the tenant could live in the rental unit as long as he wanted and the rent would not increase and if by chance the landlord ended the tenancy the tenant would be reimbursed for the work performed in the basement. The tenant testified that besides

him and the landlord, the tenant's witness TB and the landlord's witness CW were present.

The tenant described the nature of the renovations as being installation of drywall and carpeting, spraying of mould inhibiting chemicals, painting, along with some beam work.

The landlord denied that there was any agreement with respect to the tenant performing renovations to the rental unit. The landlord implied the tenant did not make any renovations and denied having any knowledge of the tenant making any renovations even though the landlord acknowledged inspecting the rental unit before the tenancy began and after the tenant vacated. The landlord pointed out that the tenant did not provide receipts to demonstrate the purchase of materials, with the exception of invoices for bin rental from a company where the tenant works.

The tenant called TB to testify as his witness. TB testified that he was present during the meeting at the rental unit at around the time the tenancy formed where the tenant and landlord met, along with TB and their mutual friend CW. TB described the condition of the basement at that time as having suffered water damage and the bottom portion (2 to 3 feet) of drywall had been removed and other walls had no drywall, carpeting was damaged by water and dog feces, and partially demolished areas such as the texture removed from the ceiling drywall. TB testified that during that meeting the landlord and the tenant agreed that in exchange for the tenant fixing up the basement the landlord would not increase the rent if someone else moved into the rental unit. TB testified that at that time it was his intention to move into the basement once a basement suite was constructed; however, a self-contained suite was not built and the tenant had his older daughter move into the basement area once the rec room and two bedrooms were finished. TB stated that he supplied the tenant with sheets of drywall and mould inhibiting chemicals to spray in the water damaged areas. TB had also observed portions of the studs that were exposed, including a beam supporting the staircase, that had to be repaired.

The landlord called CW to testify as his witness. CW testified that he had resided in the rental unit approximately five years prior and that he is currently a tenant of the landlord in another property. CW stated that during his own tenancy at the rental unit he had installed insulation and drywall in the basement so that the space was liveable. CW stated that was an acquaintance of the tenant and lived nearby but he could not recall if he was at a meeting at the rental unit when the landlord and tenant met at the property to view it. CW testified that the tenant did ask for his help installing drywall in the basement after the tenancy started since CW was a drywaller by trade but was out of

work. CW did go to the rental unit to install drywall in a number of rooms in the basement. CW described how the bottom portions of drywall missing from the walls and other walls had a number of holes which resulted in new drywall sheets being installed. CW stated that he observed TB delivering sheets of drywall to the property. CW could not recall whether he accompanied the tenant to the home improvement store to acquire additional supplies. CW stated that stud work was done, as well as painting, in the basement. CW observed concrete flooring and observed installation of carpeting that he understood the tenant obtained for free.

The landlord acknowledged that the basement had suffered water damage prior to the tenancy starting and that when the tenancy formed the basement was to be used by the tenant for storage only. The landlord explained that the land slopes toward the house and that a sump pump needs to be running during heavy rains to keep the basement dry. At the end of the tenancy the basement was flooded again. The landlord alleged this was because a wire was cut to the sump pump. The tenant alleged it was because the landlord had water lines installed to barns being built on the property and that a water line broke after the tenant stated he was going to Arbitration and the broken water line caused the flood at the end of the tenancy. The tenant had also submitted that the power cut out around the same time as the basement flooded.

The tenant was of the position the tenancy ended because the landlord wanted the tenant to move out because the tenants of the barn(s) on the property wanted to use the rental unit. The tenant provided varying reasons for this including an allegation the barn tenants were installing a grow-op and did not want other people on the property and the barn tenants wanting to use the rental unit as a "lunchroom". In his written submission, the tenant asserted that when the landlord asked him to move out by November 1, 2018 the landlord offered him compensation equivalent to the tenant's first month's rent, plus security deposit, plus moving costs but the tenant just walked away. I note that in the tenant's evidence is a text message whereby the tenant proposes to the landlord that the landlord compensate him the equivalent of first month's rent, a security deposit and moving costs. The landlord's response, sent via text, does not indicate the landlord agreed to that proposal.

The landlord acknowledged that he rents out barns on the property but was of the position the tenancy ended because the tenant did not pay rent for October 2018 and the landlord served him with a 10 Day Notice to End Tenancy for Unpaid Rent as well as a 1 Month Notice to End Tenancy for Cause on October 11, 2018 because the tenant did not pay all of the security deposit or the pet damage deposit and because the landlord suspected the tenant's children spray painted the side of the house. The

tenant filed an Application for dispute Resolution on October 15, 2018 (file number referred to on the cover page of this decision) but moved out of the rental unit before the hearing. The landlord referred me to the decision issued on November 22, 2018 for the previous proceeding.

The tenant was of the position the tenancy ended because the landlord wanted the tenant to move out so that the barn tenants could use the house and when he filed for Arbitration the landlord made the rental unit unliveable by flooding the basement with the broken water line.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 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.

Upon consideration of everything before me, I provide the following findings and reasons with respect to the tenant's claims against the landlord.

The first issue raised concerned the term of the fixed term tenancy agreement. Upon review of the tenancy agreement and in hearing from both parties, I find I prefer the tenant's submission over the landlord's and I find it more likely than not that the fixed term was set to expire on December 1, 2019. It appears to me that an attempt was made to alter 2019 to read 2018. Also, I found the landlord's credibility lacking overall. The landlord had a tendency to respond to my questions by asking questions and not answering the questions I asked of him. In my view, the landlord's was attempting to deflect from the line of questioning posed to him and I found this evasive conduct destructive to the landlord's credibility. In contrast, I found the tenant answered questions in a very straightforward manner and the tenant was responsive to the questions posed to him.

Having been satisfied the tenancy was set to expire on December 1, 2019 I turn my mind to whether the tenant is entitled to be compensated for the remainder of the fixed term after he vacated the rental unit, and moving costs.

With respect to moving costs, the tenant did not provide any receipts, invoices or other documentation to support the claim of \$6,000.00 and I dismiss this portion of the tenant's claim given the insufficient evidence to verify the amount claimed.

As for not residing in the rental unit for the remainder of the fixed term, the tenant alleges that he is paying twice as much for his current rental than he did at the rental unit. The tenant did not provide documentation, such as his current tenancy agreement or banking records, to support that position and I am unable to verify the accuracy of such a submission. The tenant also submitted that his tenancy was ended early due to actions of the landlord. However, it was undisputed that he tenant was served with two Notices to End Tenancy in early October 2018, which the tenant disputed, and an Arbitrator concluded after hearing from both parties and reviewing the evidence that the tenant did not establish a lawful right to withhold rent for October 2018 and failed to pay rent for October 2018 after receiving the 10 Day Notice. A decision issued by an Arbitrator is final and binding, subject only to review provisions. Accordingly, it has already been found that the tenancy ended due to unpaid rent and I am of the position that it is the tenant's actions that brought this tenancy to an end. Therefore, I dismiss the tenant's claim for compensation for the balance of the fixed term.

As for the tenant's request for compensation for renovations or repairs he performed at the rental unit, I accept the tenant performed or facilitated renovation and repair work in the basement of the rental unit. This assertion is supported by photographs the tenant provided of drywall work that was needed and in progress. The tenant's position was also supported by the tenant's witness and the landlord's witness.

Having accepted that the tenant did renovate the basement, I turn my mind to determining whether the tenant is entitled to compensation from the landlord in the amount claimed of \$4,500.00. I find that the tenant has not established an entitlement for the following reasons. Not only did the tenant fail to provide documentation including receipts and invoices or estimates from contractors who perform similar work that would support a claim of \$4,500.00; but, in order for me to award the tenant compensation I must be satisfied that the agreement between the parties relates to a tenancy agreement.

My jurisdiction is limited to the authority provided to me under the *Residential Tenancy Act*. The Act applies to tenancy agreements between a landlord and a tenant. Other disputes the parties may have concerning other types of contracts, such as a contract for services or employment contract must be determined in the appropriate forum. I do not have jurisdiction to resolve disputes concerning contracts for services. In order for me to award compensation to a tenant for repairs made to a property by the tenant or at the tenant's expense, I must be satisfied that the tenant either made emergency repairs to the property since the Act does contemplate reimbursement of emergency repairs or as authorized by an Arbitrator. Alternatively, I may award the tenant compensation for repairs made by the tenant if the parties agreed that the tenant would be compensated in such a way that it would impact the terms of tenancy such as a deduction from rent payable.

Emergency repairs are repairs that need to be undertaken by the tenant because the tenant cannot reach the landlord for urgent repairs to such things as blocked and leaking pipes, the heating system, the roof, the electrical system, among other things. The tenant acknowledged that the repairs he made were not "emergency repairs"; thus, I did not give further consideration to awarding the tenant compensation for "emergency repairs".

As for the tenant's claim the landlord had agreed to compensate him for work he performed, I find the agreement was not sufficiently clear and consistent. The tenant submitted to me that the landlord agreed compensate him by keeping the rent the same for as long as the tenant wanted to live in the rental unit or by reimbursing him; whereas, the tenant's his witness testified the agreement was that the rent would not increase if someone else moved in. From what was presented to me, the rent did not increase during the tenancy and the tenant did have someone else move into the basement, his daughter. As such, it would appear that the tenant benefited from the compensation agreement described by the tenant's own witness.

In light of the above, I find the tenant has not met his burden of proof that he is entitled to compensation of \$4,500.00 for repairs or renovations he made to the property under the *Residential Tenancy Act* and I dismiss this portion of the tenant's claims. The tenant remains at liberty to pursue compensation against the landlord in the appropriate forum, such as Small Claims court or Civil Resolution Tribunal, if the tenant is of the position he had a contract for services with the landlord for renovation or repairs to the rental unit.

Conclusion

The tenant's request for return of the security deposit was premature and dismissed with leave to reapply if the landlord does not comply with the orders I issued to the landlord on February 15, 2019.

The tenant's other monetary claims against the landlord were not sufficiently proven or may pertain to a contract for services for which I do not have jurisdiction. Therefore, the balance of the tenant's monetary claims against the landlord have been dismissed without leave.

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: April 24, 2019

Residential Tenancy Branch