Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNRT, MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the "*Act*") for monetary compensation for damage or loss, compensation for the cost of emergency repairs, for the return of the security deposit, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The initial teleconference hearing was scheduled for March 1, 2019 and was adjourned to be reconvened on May 2, 2019. The Tenant, Tenant's spouse, the Landlord and legal counsel for the Landlord were all present for the first hearing date on March 1, 2019. Only the Tenant was in attendance at the reconvened hearing on May 2, 2019. This decision should be read in conjunction with the interim decision dated March 8, 2019.

As stated by rule 7.3 of the *Residential Tenancy Branch Rules of Procedure,* in the absence of a party the hearing may continue, or the application may be dismissed. Although only the Tenant was in attendance at the reconvened teleconference hearing on May 2, 2019, the hearing continued.

At the initial hearing both parties stated their position that this matter is based on a rent to own agreement and not a tenancy and therefore the *Act* does not apply. As such, no testimony or evidence was taken regarding the Tenant's claims and instead testimony was heard on the matter of jurisdiction only. As stated in the interim decision dated March 9, 2019, given that there was both a tenancy agreement and a rent to own agreement, it was determined that jurisdiction may vary for each of the Tenant's individual claims. Therefore, the hearing was adjourned to be reconvened on May 2, 2019.

As such, the Landlord was not present at the reconvened hearing to present their testimony and evidence in response to the Tenant's claims. This decision will therefore be based on the verbal testimony and written evidence of the Tenant. The Tenant was affirmed to be truthful in his testimony and provided the opportunity to present testimony and evidence regarding the claims on the Application for Dispute Resolution.

Service of documents was confirmed at the initial hearing date of March 1, 2019. However, at the hearing on May 2, 2019, the Tenant stated that he had received an additional package of evidence from the Landlord. It seems that these were the same documents submitted by the Landlord to the Residential Tenancy Branch following the initial hearing. As the interim decision dated March 9, 2019 stated that no additional evidence would be accepted by either party, this evidence will not be accepted or considered. I also note that rule 7.4 states that evidence must be presented by the party who submitted it or an agent representing that party and the Landlord was not present at the reconvened hearing.

Issues to be Decided

Is the Tenant entitled to monetary compensation for damages?

Is the Tenant entitled to monetary compensation for emergency repairs?

Is the Tenant entitled to the return of the security deposit?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Tenant provided undisputed testimony regarding the tenancy. The tenancy began on September 1, 2013. The Tenant was unsure of the exact date he moved out but stated that he was served with a 2-day Order of Possession dated March 1, 2018. The Tenant stated that he applied for a review of this decision which was not granted and that he moved out 2 days later as required. The file number for the previous decision in which the Order of Possession was granted is included on the front page of this decision.

The Tenant stated that monthly rent was initially $1,092.50 and a security deposit of $650.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the Tenant.

The Tenant testified that there was an additional amount paid each month for a rent to own agreement with the Landlord, but that this was separate from the monthly rent amount. The tenancy agreement was submitted into evidence and confirms the tenancy details as stated by the Tenant.

The Tenant applied for the return of the security deposit in the amount of $650.00. The Tenant stated that he did not provide permission for the Landlord to retain any amount from the deposit. However, he also provided testimony that he has not yet provided the Landlord with his forwarding address other than on the Notice of Dispute Resolution Proceeding documents.

The Tenant has also claimed $10,755.02 which he stated is the amount he overpaid in rent during the tenancy. The Tenant testified that the Landlord did not provide any written rent increase notices and instead would give verbal notification that the rent was increasing. The Tenant stated that he was concerned about eviction so paid the amounts as requested by the Landlord. The Tenant stated that the increases were separate from the rent to own agreement and were only based on the monthly amount for the tenancy.

The Tenant submitted a written schedule showing the rent amounts paid each month and calculations of the amount over the legal rent increase amount that was paid. The Tenant also submitted into evidence transaction record receipts from the bank showing ~~cash withdrawals~~ **deposits**. Along with this, the Tenant submitted two handwritten receipts from the Landlord stating that $2,200.00 was paid by the Tenant for December 2017 and $2,200.00 for January 2018. The receipts do not clarify whether the payment was for rent, for the rent to own agreement, or for a combination of the two.

The Tenant has also claimed $5,537.71 for the cost of repairs and renovations completed to the rental unit. The Tenant testified that he spent much more than this on the repairs, but this amount equals the total of the invoices and bills he was able to provide. The Tenant stated that the renovations were completed in relation to both the tenancy and his intent to purchase the home through an agreement with the Landlord. He estimated that likely half of the repairs/renovations were connected to the tenancy and the other half with the rent to own agreement.

The Tenant stated that the rental unit was not in liveable shape when he moved in such as issues with the hot water and furnace. He stated that he notified the Landlord about the need for the repairs but did not notify her in writing. The Tenant stated that the Landlord made plans to complete the repairs but as they were not completed, he completed the work himself. The Tenant submitted approximately 88 pages of documentary evidence regarding the repairs and renovations including invoices and receipts.

The Tenant has also claimed $17,528.00 for the cost of labour to complete the repairs and renovations. He stated that although he did not provide an itemized breakdown he estimated approximately $20.00 to $25.00 per hour for the labour which included fixing the hot water and furnace, redoing the ceiling in the garage, installing lights, laying flooring, and interior and exterior painting. The Tenant also submitted photos of the rental unit.

The Tenant is also seeking $20,000.00 in compensation for reimbursement for personal belongings that the Landlord disposed of at the end of the tenancy. The Tenant stated that he was unsure of the date that he moved out as it was very hectic due to the short notice to move. He stated that as he moved out within a few days based on the Order of Possession he left many items behind and only took what seemed important in the moment. The Tenant stated that he moved out on a Sunday and by Monday afternoon the remainder of his belongings at the rental unit had been disposed of by the Landlord. The Tenant stated that he attended the rental unit on the Monday morning and the locks had already been changed.

The Tenant stated that he sent a text message to the Landlord to say that the home was available after he had moved the majority of his belongings out, but that he did not mean that he would not be back to get more of his belongings. The Tenant testified that the neighbours told him that the items had been placed on the street and then taken to the dump in trucks. The Tenant stated that he was unaware of his rights and concerned as the Landlord had told him that the authorities would be at the rental unit on Sunday evening or Monday morning to ensure he was moved out.

The Tenant submitted photos that he stated were taken on the day he moved out to show some of the items let behind. He testified that this included furniture, a piano, and other household items. The Tenant stated that $20,000.00 is his estimate of what the items were worth.

Lastly, the Tenant has applied for $3,120.00 which he stated was two month's rent due to the Landlord serving the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") and not following through on the stated purpose of the notice.

The Tenant submitted the Two Month Notice dated February 26, 2018 into evidence. The Tenant was unsure of the exact date the notice was served, but on the notice, it is indicated that it was served on February 26, 2018 by posting on the Tenant's door. The Tenant stated that it was only a day or a couple days after receiving the Two Month Notice that the parties had the hearing regarding the Landlord's application to end the tenancy early which was granted through the Order of Possession dated March 1, 2018.

The Two Month Notice states the following as the reason for ending the tenancy:

- The Landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repairs the rental unit in a manner that requires the rental unit to be vacant.

The Tenant stated that as the tenancy ended shortly after this notice was served, the parties did not engage in discussions regarding compensation for the notice and the Tenant did not have time to dispute the notice. The Tenant testified that as the Landlord sold the rental unit after he moved out, she did not complete renovations, repairs or a demolition of the rental unit as stated on the Two Month Notice. The Tenant stated that at this time the monthly rent was $1,560.00 which is why he has claimed $3,120.00 in compensation.

Analysis

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure,* the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, in this matter the Tenant has the burden of proof.

Regarding the Tenant's claim for the return of the security deposit, I refer to Section 38(1) of the *Act:*

> 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

While the Tenant submitted evidence that appears to be proof that his forwarding address may have been provided, he did not speak to this evidence and further provided testimony that his forwarding address had not been provided to the Landlord.

Without confirmation that the Landlord has received the Tenant's forwarding address, I am not satisfied that the Landlord has breached Section 38(1) of the *Act.* Therefore, the Tenant's application for the return of the security deposit is dismissed, with leave to reapply. If the Tenant has not already do so or has not been able to confirm that his forwarding address has been provided to the Landlord, he must provide the address in writing. Should the security deposit not be returned within 15 days of receipt of the forwarding address as required by Section 38(1) of the *Act,* the Tenant may apply for the return of double the security deposit as stated in Section 38(6).

As for the Tenant's claim for the return of $10,755.02 that was overpaid due to illegal rent increases, I decline to award any compensation. The Tenant submitted calculations of what he has claimed was overpaid, as well as receipts showing ~~cash withdrawal~~ **deposits,** and two receipts from the Landlord stating that $2,200.00 cash was received.

As the receipts from the Landlord do not state that the payments were for rent and both parties testified at the initial hearing that money towards a rent to own agreement was paid over and above the rent each month, I am not satisfied that $2,200.00 was paid solely for rent for those two months. I also do not find that the ~~receipts for cash withdrawals~~ **deposit receipts** establish that this is the amount that the Landlord was requesting for monthly rent. **While the deposit receipts may demonstrate an amount that was paid from the Tenant to the Landlord, given that there was also an arrangement to pay a monthly amount for a rent to own agreement, I am not satisfied as to the amount that was due for rent only**.

Accordingly, I do not find that the Tenant has met the burden of proof for me to determine, on a balance of probabilities, that the Landlord was requesting additional amounts of rent that did not comply with the legal rent increase process under Section 41 of the *Act.* I am also not satisfied that any amount paid over and above the rent as stated on the tenancy agreement was towards rent and not the rent to own agreement as I find insufficient evidence before me to establish this.

The Tenant has also applied for $5,537.71 for repairs/renovations and $17,528.00 for labour costs for completion of the repairs and renovations. Although the Tenant submitted significant evidence regarding the repairs and renovations completed on the residential property, I find that he has not met the burden of proof for me to be satisfied that the work was completed regarding the tenancy and not due to the rent to own arrangement.

Although the Tenant testified that approximately half of the amounts spent were related to the tenancy, I do not find it reasonable that a tenant would spend over $10,000.00 to fix up a rental unit, without any written agreement from the Landlord to reimburse costs or to provide permission to complete renovations or repairs. As such, I find it likely that the Tenant completed these repairs under the belief that he would be purchasing the home.

I also note that had the Tenant felt that repairs were needed in the rental unit, that both parties have responsibilities as stated under Section 32 of the *Act.* Without sufficient evidence regarding the Tenant's requests for necessary repairs in writing to the Landlord, such as fixing a hot water tank, I do not find that the proper process was followed and therefore cannot establish that these repairs were necessary or that the Landlord refused to complete the repairs after written requests were made.

As stated, on a balance of probabilities, I find it likely that any work completed by the Tenant was with the understanding that the home would be purchased by himself. Therefore, I decline to award any compensation for repairs/renovations or labour costs as I am not satisfied that they are related to the tenancy and that they fall under the jurisdiction of the *Act.* Therefore, the Tenant's claim for reimbursement for repairs and renovations is dismissed, without leave to reapply.

The Tenant is also seeking $20,000 for the cost of replacing items that the Landlord disposed of at the end of the tenancy. The Tenant claimed that he moved out quickly due to the Order of Possession and took the items he believed he would need at the

time. However, it seems that the Tenant later regretted the items left behind and returned to find them disposed of.

While the Tenant submitted photos of items he claimed were left behind and disposed of, I find insufficient evidence to establish that the Landlord disposed of his property and did not follow the process as outlined in Part 5 of the *Residential Tenancy Regulation.*

However, I also note that to claim compensation for loss, *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

While the Tenant submitted photos of the items and testimony regarding the estimated value at $20,000.00, no further information was submitted regarding the value, such as a breakdown of how much each item cost or receipt showing the value of the items purchased to replace the missing items.

As such, I am not satisfied that the Tenant has met the four-part test in establishing what items were lost and the value of these items. The Tenant was clear that $20,000.00 was an overall estimate and no itemized list of values was provided. Therefore, I find that the Tenant did not meet the four-part test in establishing value and I decline to award any compensation.

I also find insufficient evidence to establish that the items were disposed of and are not being stored or held by the Landlord in accordance with the *Regulation,* such as communication between the parties regarding the Tenant's request for the return of the items. If the Tenant did leave items behind at the end of the tenancy, the Landlord had a responsibility to deal with these items in accordance with Part 5 of the *Residential Tenancy Regulation.*

However, as stated, I find insufficient evidence to establish that the Landlord breached the *Act, Regulation* or tenancy agreement, as well as to establish the value of the items.

As I do not find that the Tenant met the four-part test as outlined above, I decline to award any compensation for these items.

Regarding the Tenant's claim for two months of compensation for receipt of a Two Month Notice, I refer to Sections 49 and 51 of the *Act.* I also note that although Section 51 of the *Act* currently provides for 12 months compensation, this change in legislation took place on May 17, 2018. Therefore, as the Two Month Notice in question was served prior to this change, on February 26, 2018, I find that it is the previous legislation that applies which provided for two months compensation under Section 51 of the *Act.*

At the time the Two Month Notice was served, Section 51(2) of the *Act* stated the following:

> (2) In addition to the amount payable under subsection (1), if
>
> (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
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> (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
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> the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

However, I find that the Tenant is not entitled to compensation under Section 51(2) as the tenancy did not end on the Two Month Notice and therefore the tenancy had ended prior to the effective date of the notice. The Tenant received the Two Month Notice on or around February 26, 2018 and the Landlord was granted a 2-day Order of Possession on March 1, 2018 on which the tenancy ended.

Section 51(2) of the *Act* references a tenancy ending under Section 49 of the *Act* as consideration regarding compensation under this Section. I accept the evidence before me that demonstrates that the tenancy did not end on the Two Month Notice and therefore find that the Tenant is not entitled to compensation under Section 51(2).

As the Tenant was not successful with the application, I decline to award the recovery of the filing fee.

Conclusion

The Tenant's application for the return of the security deposit is dismissed, with leave to reapply. The remainder of the Tenant's claims are dismissed, without leave to reapply.

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: May 27, 2019

Corrected: June 7, 2019

Residential Tenancy Branch