



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT (Tenant)
 FFL, MNDCL, MNDL-S (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed the application June 21, 2019 (the “Tenant’s Application”). The Tenant applied for compensation for monetary loss or other money owed.

The Landlord filed the application July 05, 2019 (the “Landlord’s Application”). The Landlord applied for compensation for damage to the unit, compensation for monetary loss or other money owed, to keep the security or pet damage deposit and for reimbursement for the filing fee.

The Tenant appeared at the hearing.

The Agent for the Landlord appeared at the hearing. I asked the Agent to have the Landlord call into the hearing and confirm she had authority to appear for him during the hearing. The Agent did so. The Landlord called in and confirmed this. He then exited the conference call.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Agent confirmed the Landlord received the hearing package and evidence for the Tenant's Application. She confirmed the Landlord received these in time to prepare for the hearing.

The Tenant confirmed receipt of the Notice of Dispute for the Landlord's Application. This would have included a copy of the Landlord's Application. The Tenant testified that he did not receive the Landlord's evidence.

The Agent testified that the Landlord provided the evidence to the Tenant's sister or brother-in-law at the Tenant's residence and that she was in the car when he did this. She testified that the Landlord came back and told her what had happened and been said.

The Landlord submitted the following evidence:

- Statement on Restitution
- Victim Impact Statement
- A letter to the Agent about the Victim Impact Statement
- Recognizance After Allegation in relation to the Tenant

It is the Landlord who must prove service of his evidence on the Tenant. The parties gave conflicting testimony about whether the evidence was served. The Landlord did not submit any documentary evidence of service. The Landlord did not provide testimony about service. I was not satisfied the evidence was served. I heard from the parties on whether the evidence should be admitted or excluded. I exclude the evidence as I am not satisfied it was served on the Tenant as required by the Rules of Procedure. However, I also note that the evidence is irrelevant to the issues before me and would have had no impact on the decision in any event.

The Agent advised that the Landlord is seeking \$10,000.00 in compensation, not the \$20,000.00 indicated on the Landlord's Application. The Landlord did not submit a Monetary Order Worksheet or breakdown of amounts sought. The Tenant confirmed he was fine with me proceeding despite this.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

I note that the Agent hung up for approximately five minutes at the outset of the hearing. I proceeded to hear from the Tenant about the end of the tenancy during this time as parties are expected to call into the hearing and remain on the call throughout.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to compensation for damage to the unit?
3. Is the Landlord entitled to compensation for monetary loss or other money owed?
4. Is the Landlord entitled to keep the security or pet damage deposit?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant testified as follows in relation to the tenancy agreement. There was a verbal tenancy agreement between him and the Landlord in relation to the rental unit. The tenancy started in 1988. Him and the Landlord did not discuss a term. Rent at the end of the tenancy was \$420.00 per month due on the first day of each month. He never paid a security or pet damage deposit.

The Agent testified as follows in relation to the tenancy agreement. She does not know if there was a written tenancy agreement between the Landlord and Tenant. She does not know when the tenancy started but the Landlord told her it did 30 or 40 years ago. The Landlord told her the Tenant paid \$320.00 in rent per month at the end of each month. The Tenant never paid a security or pet damage deposit.

The parties agreed on the following in relation to the end of the tenancy. Police removed the Tenant from the rental unit February 02, 2019 because of assault charges. The Tenant was ordered not to return to the rental unit through the court process. The Tenant, or others for the Tenant, returned to the rental unit February 20, 2019 to obtain his belongings. The Landlord served the Tenant with a One Month Notice for Cause at the beginning of February with an effective date of March 01, 2019.

The Agent testified that the One Month Notice for Cause was served on the Tenant February 01, 2019.

The Tenant testified that he received the One Month Notice for Cause February 02, 2019.

The parties agreed no move-in or move-out inspections were ever done.

The Landlord sought \$10,000.00 for:

Smoke damage to the suite, cleaning and replacement of drywall and painting, carpet. Work costs and sickness do to the smell. The assault to my wife...

The Agent testified as follows in relation to the claim for compensation for "Smoke damage to the suite, cleaning and replacement of drywall and painting, carpet." This is for having to clean the mess the Tenant left behind. The rental unit was damaged by nicotine smoke. There were nicotine stains on the walls and ceiling. She could smell the smoke. The Tenant smoked in the rental unit for years. The whole rental unit was filthy. She helped with the cleaning. It took a lot of work to get the rental unit "in shape". There was grease on the stove. The bathroom was filthy. The Agent testified that "labour and stuff" was \$1,200.00. Drywall was \$5,000.00. Paint was "a couple grand". Cleaning supplies were "a few hundred". Carpet was "around \$3,000.00 or something".

The Tenant denied there was smoke damage to the rental unit. The Tenant testified that he had no choice but to leave the rental unit dirty because he was not allowed in the rental unit at the end of the tenancy. The Tenant denied he caused damage that required drywall repairs or painting. The Tenant testified that there had been a flood in the rental unit and machinery used to address the flood left marks on the walls. The Tenant testified that the carpet was clean. He said the rental unit had not been painted since 1989 and needed to be re-painted.

The Agent testified as follows in relation to the claim for compensation for "Work costs and sickness do to the smell." The rental unit smelled like cigarette smoke and grease. The couch was filthy. The Landlord had to take the couch to the dump. The Landlord paid her to clean the rental unit. She could not handle the smell. The rental unit was dusty and had cobwebs.

The Tenant disputed the Agent's testimony about the state of the rental unit and said it was not that bad. The Tenant testified that everything was overdue to be done. He testified that the carpet should have been thrown out in the 1990s after the flood.

In relation to the claim for compensation based on "The assault to my wife", I understood this to relate to the allegation that the Tenant assaulted the Agent. I asked the Agent for her position on why the Landlord was entitled to compensation for this. The Agent said this should be removed from the Landlord's Application and therefore I did not hear about it further.

In relation to the Tenant's Application, he claimed the following compensation:

- Living out of house and restaurants \$1,000.00
- Taxis \$200.00
- Medical expenses \$200.00
- Storage locker \$225.00

I understand the Tenant's Application to seek the above for five months totalling \$8,125.00.

The Tenant confirmed that his request for compensation is based on having been displaced from the rental unit February 02, 2019. He acknowledged that it was the police who removed him from the rental unit and court that ordered him not to return to the rental unit. He said the Landlord had lied in relation to the assault charges and that the court "dropped the charges" in June. He also took issue with the One Month Notice for Cause.

Analysis

The parties agreed the Tenant never paid a security or pet damage deposit. Therefore, the Landlord's request to keep the security or pet damage deposit is a moot point. This request is dismissed without leave to re-apply.

The Landlord seeks \$10,000.00 for "Smoke damage to the suite, cleaning and replacement of drywall and painting, carpet. Work costs and sickness do to the smell."

Section 7 of the *Residential Tenancy Act* (the "Act") states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- 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.

Pursuant to section 37 of the *Act*, the Tenant was required to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The Agent testified about the state of the rental unit at the end of the tenancy. The Tenant disputed the Agent's testimony about the state of the rental unit and denied he was responsible for damage to the rental unit.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord as applicant who has the onus to prove the claim. The Landlord submitted no evidence to support the Agent's testimony about the damage or state of the rental unit. There is no evidence before me about the state of the rental unit at the start of the tenancy. The Landlord submitted no evidence to support the Agent's testimony that it is the Tenant who is responsible for the stated damage to the rental unit. In the absence of evidence to support the Agent's testimony on these points, I am not satisfied the Tenant damaged the rental unit beyond reasonable wear and tear.

The Tenant acknowledged the rental unit was not cleaned upon move out. However, in the absence of further evidence showing the state of the rental unit, I am not satisfied the Landlord has proven the rental unit was not left reasonably clean.

Further, even if I accepted that the Tenant breached section 37 of the *Act*, the Landlord submitted no evidence to support the Agent's outline of the costs claimed. I found the Agent's testimony on this point vague. In the circumstances, the Landlord has failed to prove he is entitled to the compensation sought.

In relation to the request for compensation for "Work costs and sickness do to the smell", I make the same comments as above. The Landlord has not proven the state of the rental unit at the end of the tenancy. Further, the Agent did not outline a clear basis for this claim during the hearing. The Agent did not explain why the Landlord is entitled to compensation for "work costs" or "sickness" or what these were. The Landlord has not proven this aspect of the claim.

The Landlord has failed to prove he is entitled to the compensation sought. The Landlord's requests for compensation for damage to the unit and compensation for monetary loss or other money owed are dismissed without leave to re-apply.

I decline to award the Landlord reimbursement for the filing fee given he was not successful in this application.

The Landlord's Application is dismissed without leave to re-apply.

The Tenant applied for \$8,125.00 in compensation based on the costs associated with being displaced from the rental unit February 02, 2019. The Tenant acknowledged that the police removed him from the rental unit February 02, 2019 and that the court ordered him not to return to the rental unit. It is my understanding from the Tenant's testimony that this condition was in place until June when the court "dropped the charges". I understand this to be the five-month period the Tenant refers to in his application.

The Tenant could not explain how the Landlord breached the *Act*, *Residential Tenancy Regulation* (the "*Regulations*") or tenancy agreement such that he is entitled to compensation through the RTB. The Tenant raised an issue with the One Month Notice for Cause; however, I find the Tenant was displaced from the rental unit by police and a court order, not by the Landlord. The Tenant said the Landlord lied in relation to the

assault charges. As stated at the hearing, this is not an RTB issue and is not an issue that the *Act*, *Regulations* or tenancy agreement applies to.

In the circumstances, I do not accept that the loss claimed arises out of a breach by the Landlord of the *Act*, *Regulations* or tenancy agreement. The Tenant is not entitled to the compensation sought.

The Tenant's Application is dismissed without leave to re-apply.

Conclusion

The Landlord's Application is dismissed without leave to re-apply.

The Tenant's Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 02, 2019

Residential Tenancy Branch