



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAXTRUM HOLDINGS INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPU, OPC, MNRL-S, MNDCL-S, FFL; CNR, CNC, OLC, PSF, RR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, utilities, and for cause, pursuant to section 55;
- a monetary order for unpaid rent, utilities, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for its application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 27, 2019 ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated December 27, 2019 ("1 Month Notice") pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;

The "female tenant" did not attend this hearing, which lasted approximately 86 minutes. The male tenant ("tenant") and the landlord's two agents, female landlord ("landlord") and "male landlord," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that she was the director and the male landlord was the manager, and that both agents had permission to represent the landlord company named in this application at this hearing. The tenant confirmed that he had permission to represent the female tenant at this hearing (collectively “tenants”). The landlord and the male landlord spoke for the majority of the hearing time, as compared to the tenant.

The hearing began at 9:30 a.m. The landlord unexpectedly disconnected from the hearing at 10:55 a.m. The hearing ended at 10:56 a.m.

Both parties confirmed receipt of the other party’s application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party’s application.

The landlord claimed that she did not receive the tenants’ notice of hearing, but she received their application and evidence. She claimed that she received the notice of hearing details from the RTB and through the landlord’s application. She said that she received the tenants’ evidence on February 4, 2020.

I notified both parties that I would consider the tenants’ application and evidence at the hearing and in my decision. The landlord already had her own notice of hearing, which was scheduled for the same date time, phone number and access code as the tenants’ application. The landlord received the tenants’ application and evidence and had notice of the tenants’ claims. I find that the landlord had more than a month to review and respond to the tenants’ evidence, which she did in written and verbal format at the hearing.

The tenants’ evidence was received by the landlord at least 14 days prior to this hearing date, as per Rule 3.14 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure*. The landlord was prepared to deal with the tenants’ application at the hearing. I find no prejudice to the landlord in considering the tenants’ application, as it related to the same matters that the landlord applied for. The landlord did not identify any prejudice at the hearing.

At the outset of the hearing, both parties confirmed that the tenants had vacated the rental unit. I notified them that the portions of their applications relating to an ongoing tenancy, were dismissed without leave to reapply.

Preliminary Issue – Inappropriate Behaviour by the Landlord during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout the conference, the landlord interrupted, yelled, and argued with the male landlord, the tenant, and me. I cautioned the landlord multiple times to stop yelling and interrupting and to allow others to speak. I notified the landlord that my role as an Arbitrator required me to maintain control of the conference, ensure that only one person was speaking at a time, and confirm that all parties provide testimony when it is their turn to speak. I asked the landlord to allow me to speak so that I could effectively conduct the hearing. I notified her that I would give her a chance to speak and present her case, as well as respond to questions. In fact, the landlord spoke for the majority of the hearing time, as noted above.

The hearing took longer because of the disruptive behaviour of the landlord. Despite the landlord's behaviour, I allowed her to attend the full hearing, in order to provide her with a full opportunity to present the landlord's application and respond to the tenants' application. The landlord disconnected from the hearing, without warning, approximately one minute before it ended, after all submissions had been made. The landlord could be heard yelling at the male landlord, the tenant, and me, at the time that she disconnected from the hearing.

I caution the landlord to not engage in the same inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated, and she may be excluded from future hearings. In that event, a decision will be made in the absence of the landlord.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, utilities, and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee for its application?

Are the tenants entitled to an order to allow them to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2019 and ended on March 1, 2020. Monthly rent in the amount of \$2,000.00 was payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties.

The landlord seeks a monetary order of \$33,535.78 including the \$100.00 application filing fee. The tenants dispute the landlord's application.

The landlord stated that the tenants signed a fixed term tenancy agreement, ending on July 31, 2020. She said that the tenants did not provide written notice to move out and only paid five months of rent from August to December 2019, leaving a balance of seven months, at \$2,000.00 for each month, from January to July 2020, for a total of \$14,000.00. The landlord seeks \$596.14 for utilities, which the tenant agreed to pay during the hearing. The landlord claimed that the tenants were not allowed to use the pool or the garage during their tenancy, because the tenancy agreement said that recreational facilities and storage were not included. She explained that she told the tenants to move out of the rental unit if they had an issue with not using the backyard during the tenancy. She said that the rental unit will take a lot of work to clean up, the tenants left trash in the house, and she only wants to work with a school to find new tenants because she had such a bad experience with these tenants. The landlord seeks \$4,000.00 because she said the tenants threatened and harassed her, and she called the police, but they told her it was an RTB matter. She said that she did not provide proof of police calls or reports but there were numerous text messages she provided.

The landlord seeks \$6,230.56 for the tenants using her backyard, \$600.00 to clean the pool twice because the tenants turned it green, \$21.00 for bounced cheques for rent payments, \$27.00 for missing locks, \$200.00 for the mold inspection due to the tenants' complaint, \$161.08 for the false alarm and postage fee, and \$300.00 for the filing fee, photocopies, and postage for this application. The landlord estimates that it will cost \$1,000.00 for the gate, electricity, and panel box, \$400.00 for an estimated cleaning fee but it will probably cost \$600.00 after the landlord has to dispose of the needles, \$3,000.00 estimated to fix and paint the walls and holes, and \$3,000.00 for other expenses that may be required.

The tenants dispute the landlord's application. The tenant agreed that the tenants did not pay rent for January and February 2020 to the landlord. He said that the tenants were being evicted by the landlord, it was a hassle to move out, it was an "unpeaceful environment," and the tenants did not get a response from the landlord when they said they would not pay rent. He confirmed that the landlord issued 15 eviction notices over six months while the tenants were living at the rental unit. He claimed that the tenants did not have the use of the backyard and they only stored a couple of floaties in the pool at the rental property. He said that the tenants returned on March 2, 2020, to clean up the rental unit but they were locked out by the landlord. He stated that the tenants did not smoke inside the rental unit, as alleged by the landlord. He maintained that the landlord had no evidence of pool maintenance.

The tenants seek a monetary order of \$4,476.00. The tenant said that the tenants were unable to use the backyard during their tenancy and they calculated the loss using the square footage of the house and the square footage of the backyard. The tenant did not have the calculations in front of him during the hearing, stating that he did not know the exact numbers. He explained that it was \$700.00 per month roughly. He maintained that there was nothing in the parties' tenancy agreement that the backyard was not included in the tenancy, so the tenants want their use of the backyard value back. He said that the Arbitrator at the parties' previous RTB hearing said that the tenants were not using the backyard at the rental property.

The landlord disputes the tenants' application. The male landlord said that the tenants were not evicted at the previous hearing. He noted that the previous Arbitrator had photographs of inflatable boats, pool swans and toys in the pool, not just a couple of pool floaties, as claimed by the tenants. He agreed that the landlord locked the tenants out of the rental unit on March 2, 2020, because he said the tenants left the house open and were gone, they just left their belongings there. He said that a bike lock was used to keep the tenants out, the locks were not changed.

Analysis

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimony and their demeanour at the hearing. Considered in its totality, I found the tenant to be a more credible witness than the landlord. I found the tenant to be forthright, providing his evidence in a calm, candid and straightforward manner. He provided consistent and logical testimony.

Conversely, I found that the landlord was argumentative during the hearing. She did not provide her testimony in a calm and candid manner. She provided inconsistent testimony. The landlord was yelling at and interrupting the male landlord, the tenant and me throughout the hearing. When I asked the landlord relevant questions about the landlord's application, she became upset and agitated, arguing about the tenant's behaviour. When given the opportunity to present evidence, the landlord chose to provide irrelevant rather than substantive information. I provided the landlord with an opportunity to present her submissions and evidence and to go through her documents. I repeatedly reminded her that she could go through her documents submitted for this hearing. The landlord chose instead to yell at the tenants and me, rather than go through her documents, arguing that the tenants used the backyard at the rental property when they were not permitted to do so.

Agreement

During the hearing, the male landlord agreed to meet the tenants at the rental unit at 3:00 p.m. on March 10, 2020, and to provide access to the tenants for them to retrieve their personal possessions from the rental unit. I order the landlord to comply with the above agreement and to safeguard the tenants' possessions until they are retrieved, which the male landlord agreed to do. If the landlord fails to provide access or damages, destroys, disposes of, or fails to safeguard the tenants' possessions, the tenants are entitled to file an application for dispute resolution at the RTB for the return of their personal property and/or for monetary compensation.

Burden of Proof

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings.

Landlord's Application

Section 26 of the *Act* requires tenants to pay rent on the date indicated in the tenancy agreement, which in this case is the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I award the landlord \$4,000.00 total for unpaid rent for January and February 2020. The tenant agreed that the tenants did not pay this rent to the landlord. The tenants lived at the rental unit during the above months. I do not accept the tenants' evidence that because the tenants were being evicted and did not like the environment, they could withhold rent from the landlord. The tenants did not have an order from an Arbitrator or an emergency repair payment under section 33 of the *Act*, in order to deduct any amounts from rent.

I award the landlord \$596.14 for unpaid utilities. The tenant agreed to pay this amount during the hearing.

I award the landlord \$21.00 for NSF fees for September 2019, January 2020 and February 2020, for three rent cheques that were returned, due to non-sufficient funds of the tenants. The landlord provided proof of all three cheques with the fees, from the bank. The tenant agreed that rent was not paid for January and February 2020.

I dismiss the landlord's claim for "the threatening and harassing" of \$4,000.00, without leave to reapply. The tenants disputed this cost. I find that the landlord was unable to justify the amount being claimed. I find that the landlord failed to provide sufficient documentary evidence of threats or harassment, such as police reports, criminal charges or other such evidence. I also find that threats and harassment are criminal claims under the *Criminal Code of Canada* legislation, enforceable by the police in the Court system, not residential tenancy claims under the *Act*.

I dismiss the landlord's claim for "using the backyard" of \$6,230.56, without leave to reapply. The tenants disputed this cost. I do not find that the tenants are required to pay a fee if they used the backyard at the rental unit, which they denied. I find that the landlord was unable to show a specific loss was suffered for this claim. I also find that the landlord failed to provide proper details of this claim and the loss.

I dismiss the landlord's claim for "the pool cleaning fee" of \$600.00, without leave to reapply. The tenants disputed this cost. I find that the landlord failed to provide proper details of this claim or to go through invoices or receipts for this cost during the hearing.

I dismiss the landlord's claim for "missing locks" of \$27.00, without leave to reapply. The tenants disputed this cost. I find that the landlord failed to provide proper details of this claim or to go through invoices or receipts for this cost during the hearing.

I dismiss the landlord's claim for the mold inspection of \$200.00, without leave to reapply. The tenants disputed this cost. I find that the landlord failed to provide proper details of this claim or to go through invoices or receipts for this cost during the hearing.

I dismiss the landlord's claim for the "false alarm and postage fee" of \$161.08, without leave to reapply. The tenants disputed this cost. I find that the landlord failed to provide proper details of this claim or to go through invoices or receipts for this cost during the hearing.

I dismiss the landlord's claim for a loss of rent of \$10,000.00 from March to July 2020, with leave to reapply. The landlord has made a premature application for future rent amounts. The landlord does not know the extent of rent losses, many months into the future. The landlord stated that she needs to complete repairs and clean up the rental unit before re-renting it to new tenants.

I dismiss the landlord's claims for the gate, electricity and panel box of \$1,000.00, the cleaning fee of \$400.00, fixing and painting walls of \$3,000.00, and "others" of \$3,000.00, all with leave to reapply. The landlord has made a premature application. The landlord stated that she has not incurred the above costs, has not completed any repairs or cleaning, and does not know the costs at this time, as she has only provided estimates, above.

I dismiss the landlord's claim for "the expense of all cases" of \$300.00, without leave to reapply. The landlord claimed that this was for the filing fee, registered mail, and other hearing-related costs. The only hearing-related costs recoverable under section 72 of the *Act*, are for filing fees.

Since the landlord was mainly unsuccessful in its application, I find that the landlord is not entitled to recover the \$100.00 application filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$1,000.00. Over the period of this tenancy, no interest is payable on the deposit. I order the landlord to retain the tenants' entire security deposit of \$1,000.00, in partial satisfaction of the monetary order. I issue a monetary order for \$3,617.14 to the landlord for the balance due.

Tenants' Application

I dismiss the tenants' application for a monetary order of \$4,476.00 for the loss of the use of the backyard at the rental property, without leave to reapply.

I find that the tenant failed to go through his calculations and provide proper details of the monetary breakdown during the hearing. The tenant said that he did not have "the exact numbers" in front of him during the hearing. I find that the tenants failed to show how their inability to use the backyard at the rental unit caused them a specific loss.

Conclusion

I order the landlord to provide access to the rental unit for the tenants to retrieve their personal possessions at 3:00 p.m. on March 10, 2020. I order the landlord to comply with the above and to safeguard the tenants' possessions until they are retrieved.

I order the landlord to retain the tenants' entire security deposit of \$1,000.00.

I issue a monetary order in the landlord's favour in the amount of \$3,617.14 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's claims for a loss of rent of \$10,000.00 from March to July 2020, the gate, electricity and panel box of \$1,000.00, the cleaning fee of \$400.00, fixing and painting walls of \$3,000.00, and "others" of \$3,000.00, are all dismissed with leave to reapply.

The remainder of the landlord's application is dismissed without leave to reapply.

The tenants' entire application is 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: March 12, 2020

Residential Tenancy Branch