



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, LRE, AAT

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement;
- an order suspending or setting conditions on the landlord's right to enter the rental unit; and
- an order requiring the landlord to allow access to the rental unit for the tenant and his guests.

The listed tenant attended the hearing; however, the landlords did not attend.

The tenant stated he served the landlords with their application for dispute resolution and Notice of Hearing by email attachment as allowed by the Director's Order, dated March 30, 2020.

In part, the Director's Order allows service of documents under section 89 of the Act until the declaration of the state of emergency made on March 18, 2020 is cancelled or expires without being extended. In part, the Director's Order states that one way a document may be served on the other party is:

the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed.

I have reviewed the tenant's evidence and find it meets the criteria for service under the Director's Order, as it was emailed to the email address of the landlord, YQ, regularly used for communication through the tenancy.

I therefore accept that landlord, YQ, was sufficiently served and the hearing proceeded in the landlord's absence.

As the landlord, YH, was not served at her individual email, I have excluded her from further consideration in this matter.

The tenant was provided the opportunity to present his evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the tenant and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlord?

Are the tenants entitled to the orders for relief sought under the Act?

Background and Evidence

The tenant submitted that this tenancy began in December 2015, monthly rent began at \$1,400 and is currently \$1,517. The rental unit is the basement suite of a home owned and occupied in the upper level by the landlords.

The tenant submitted that he has continuously been in another country since December 2019, and therefore has not returned to the rental unit. The tenant submitted that he informed the landlords of their intention to be in another country for an extended period of time.

The tenant said that since they have been gone, the landlord has been in contact with emails, and in one of them, he threatened to have all the tenants' personal property and belongings removed and to have their two vehicles towed.

Due to the actions of the landlords, the tenant said that they did not return on their originally planned date of April 5, 2020, as they did not believe they had a home to return to.

In support of his application, the tenant provided the following evidence.

An order requiring the landlord to comply with the Act, regulations, or tenancy agreement -

The tenant wrote that the landlord did not respond to all of his communication, by emails, phone calls, SMS or voice mails. The landlord just sent a few emails threatening to have his personal property removed and to have his vehicles removed within 24 hours.

An order requiring the landlord to allow access to the rental unit for the tenant and his guests –

The tenant submitted that while they were away from the country, some of their friends were going to sub-let the rental unit, with the full knowledge of the landlords.

The tenant said when his friends arrived on March 24, 2020, the landlord said they could not live there, and said they could spend the night and leave. The tenant said the landlord changed the locks on March 25, 2020.

An order suspending or setting conditions on the landlord's right to enter the rental unit -

The tenant wrote that the landlords have entered their rental unit and kept the windows open from April 13-15, putting their personal property at risk.

Monetary claim –

The tenant's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. March and April rent, changing locks	\$3,114
2. Loss of value of their car	\$4,000
3. Moving expenses	\$1,500
4. Hotel expenses	\$1,500
5. Family counselor expenses	\$1,000
6. New house	\$4,000
TOTAL	\$15,114

March and April rent –

The tenant said that he gave the landlord the rent for March 2020; however, the landlord informed the tenant that he put the cheque in the bank and there was no money in the account. On March 25, 2020, the tenant submitted that he told the landlord the funds were in his account; however, the landlord has not tried to cash the cheque yet.

The tenant submitted that the landlord refused the rent for April 2020.

Loss of value of car –

The tenant said that the landlord sent an email and threatened to have the vehicles removed. The tenant submitted that he was pressured to have the cars removed, and because one of his vehicles had no license plates, they had to put the car on an off-site lot. The tenant said that he had to sell the car for a loss, due to the pressure of having it removed.

Moving expenses –

The tenant said the landlords should be responsible for moving costs, as he insists the tenants vacate. The tenant confirmed that he has not yet moved and has not yet returned to the rental unit from abroad.

Hotel expenses –

The tenant said that because the landlord has denied access to the rental unit by changing the locks, he will have to go to a hotel when he returns, due to the 14 day quarantine period required of travelers returning from abroad.

Family counselor –

The tenant said that the landlord's emails telling them to move out has caused his family a lot of stress, which has led them to seek family counseling.

New house –

The tenant said the landlord will not provide a good reference for the tenants, which means the tenants will have to buy a house, instead of being able to rent.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows on each of the issues raised in the tenant's application:

An order requiring the landlord to comply with the Act, regulations, or tenancy agreement -

After hearing from the tenant and reviewing their evidence, I find it was not made clear to which section(s) of the Act, Regulations, or tenancy agreement the tenants referred.

I do not find emails from the landlord to have breached the Act. At the point of the emails, the tenants had been away from the rental unit for three months.

While the tenant sent the landlord a text message on December 30, 2019, telling the landlord that three of his friends would be moving into the rental unit to sublet, the evidence shows that no one attempted to visit or move in until March 24, 2020.

The landlord may have very well been concerned about people arriving at the rental unit three months later than planned, at the time when the Covid-19 pandemic had begun.

I therefore dismiss the portion of the tenant's application for an order for the landlord's compliance, due to insufficient evidence.

An order requiring the landlord to allow access to the rental unit for the tenant and his guests –

In this case, the landlord has yet to deny the tenant access to the rental unit, as the tenant has remained out of the country since December 30, 2019, and has not returned.

As already stated, there was no evidence that anyone had tried to enter the rental unit from the end of December 2019, until March 24, 2020.

Additionally, the tenant did not dispute that when the landlord first deposited the March rent cheque, there were insufficient funds in the tenant's bank account.

I find it reasonable under these circumstances that the landlord would change the locks to prevent people he did not know from entering the rental unit, at the end of March 2020, when the pandemic had already started.

Due to the insufficient evidence of the tenant that they have been denied access, I dismiss the tenant's claim for an order requiring the landlord to allow access to the rental unit for the tenant and his guests.

An order suspending or setting conditions on the landlord's right to enter the rental unit -

I find the tenant's evidence is vague as to whether the landlord entered the rental unit illegally. As has been said, the tenants have been away from the rental unit since the end of December 2019, and the landlord may very well have given sufficient notice to enter the rental unit.

If it turns out the landlord has disposed of the tenants' personal property or belongings improperly, the tenants may address that matter with a future application for dispute resolution.

Due to the tenant's insufficient evidence, I dismiss this portion of the tenant's application.

Monetary claim –

Test for damages or loss

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 sections 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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

March and April rent –

The tenant's evidence is that he has not paid the monthly rent for March or April 2020, and therefore, I find he has not established a claim to be paid for the monthly rent he has not paid himself.

This claim is dismissed, due to insufficient evidence.

Loss of value of car –

I find the tenant submitted insufficient evidence to substantiate that he was forced to sell his car or that it was sold for a loss. The tenant also failed to provide the value of the car at the time of the sale or what attempts were made to sell it at the value the tenant believed it to be.

I therefore find the tenant submitted insufficient evidence to support this claim and it is dismissed.

Moving expenses –

In this case, the tenants have not yet returned to the country from abroad and have not moved. It is undetermined as to whether or not the landlord would allow access to the rental unit.

I find the tenant has submitted insufficient evidence to show that they moved or have incurred any expenses to date. I dismiss this claim.

Hotel expenses –

As I have previously mentioned, the tenant has not yet substantiated that the landlord has denied them access to the rental unit. More importantly, the tenants have not incurred any hotel expenses at this point, as they have not yet returned from abroad.

I find the tenant submitted insufficient evidence to show a loss and I dismiss this claim.

Family counselor expenses –

I find the tenant submitted insufficient evidence to show that they have incurred any expenses for a family counselor, step 3 of their burden of proof.

I therefore dismiss this claim of the tenant.

New house –

I find the tenant submitted insufficient evidence to show that they have incurred any expenses for purchasing a new house, step 3 of their burden of proof. I also find that the tenant has not established that the landlord's actions would force them to even buy a house.

I therefore dismiss this claim of the tenant.

Due to the above, as I have dismissed each of the tenant's request for orders for the landlord and each item of their monetary claim, I dismiss the tenant's application, in full, without leave to reapply.

Conclusion

For the above reasons, the tenant's application is dismissed.

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: June 10, 2020

Residential Tenancy Branch