



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RPP

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Compensation for monetary loss or other money owed; and
- An order for the Landlord to return their personal property.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant's advocate (the Advocate) and two witnesses for the Tenant, W.F. and H.H. (the Witnesses), all of whom provided affirmed testimony. Neither the Landlord nor an agent for the Landlord attended. The Tenant, the Advocate and the Witnesses were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Landlord nor an agent for the Landlord attended the hearing, I confirmed service of these documents as explained below.

The Tenant and the Advocate testified that the Application, the Notice of Hearing, and exhibits A-H were sent to the Landlord by registered mail on May 7, 2020, at their primary residence. The Tenant stated that they know this is the Landlord's primary residence as they have visited the Landlord at this address numerous times. The Tenant also submitted a Land Title document for purchase of the rental unit which shows the addresses used for the registered mail as the Landlord's address. The Witnesses, who stated that they are the sister and brother-in-law of the Landlord, also testified that this was the correct primary residence address for the Landlord, and that they know that the Landlord has been present at the property recently. The Tenant provided me with the registered mail tracking number, which is recorded on the cover page for this decision, however, and the Canada Post website displays an error

message for the tracking number. The error message does not indicate that the tracking number is invalid, instead, it simply fails to show the tracking information.

Based on the documentary evidence before me and the uncontested and affirmed testimony of the Tenant and the Witnesses, I am satisfied that the address used for the registered mail is a valid address for service for the Landlord pursuant to sections 88(c) and 89(c) of the Act and that the Landlord has been present at their address recently. I also accept the affirmed testimony of the Tenant that the registered mail was sent on May 7, 2020. As a result, and pursuant to section 90(a) of the Act, I find that the Landlord was deemed served with the registered mail in accordance with the Act and the Rules of Procedure on May 12, 2020, five days after it was sent by registered mail. Pursuant to rule 7.3 of the Rules of Procedure, the hearing therefore proceeded as scheduled despite the Landlord's absence, as I was satisfied that they were deemed served with adequate notice of the hearing.

The Tenant and their Advocate stated that additional documentary evidence was sent to the Landlord by registered mail on July 31, 2020, and provided me with the registered mail tracking number, which is recorded on the cover page for this decision. The Canada Post website indicates that this registered mail was sent as described above and delivered to a community mailbox on August 5, 2020. As a result, I find that the Landlord was deemed served with the registered mail on August 8, 2020, three days after it was delivered to a community mailbox, pursuant to section 90(d) of the Act.

As both packages were deemed served within the timelines set out for the service of applicant evidence in the Rules of Procedure, I therefore accept the Tenant's documentary evidence for consideration in this matter.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be emailed to the Advocate at the email address provided in the hearing.

Issue(s) to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed?

Is the Tenant entitled to an order for the Landlord to return their personal property?

Background and Evidence

The Tenant stated that they first moved into the rental unit as a roommate of their friend, who was also the owner of the rental unit, approximately 15 years ago. Although the Tenant acknowledged that they originally shared a kitchen and bathroom with the owner, they stated that the original owner's son purchased the property in July of 2019, and entered into a verbal tenancy agreement with them. The Tenant stated that the new owner did not reside at the property and they and their Advocate therefore argued that a tenancy not excluded under section 4 of the Act was established.

Although the Tenant stated that the tenancy agreement was largely verbal, the new owner, who was now their Landlord, signed a Shelter Information Form for them indicating that rent in the amount of \$400.00 was to be paid to them each month. A copy of this form was submitted for my review, which is dated July 15, 2020, and appears to have been signed by the Landlord. The Tenant also stated that the government agency for which the form was completed, began sending this rent amount to the Landlord directly each month.

The Tenant stated that both they and their roommate, who is the Landlord's father, were locked out of the rental unit on March 2, 2020, without any authority on the part of the Landlord under the Act to do so. The Witness H.H. confirmed that both the Tenant and their father were locked out of the rental unit. The Tenant stated that although they were briefly permitted access to the rental unit in the presence of police to obtain a few personal possessions, they ultimately never regained possession of the rental unit from the Landlord. As a result, the Tenant sought the return of \$400.00 in rent paid directly to the Landlord for March of 2020.

The Tenant stated that they were notified by a former neighbour on April 21, 2020, that the Landlord had put some of their possessions outside; however, they were unable to retrieve or store the possessions as they had no vehicle or access to funds for storage. The Tenant stated that they were finally able to obtain a ride to the rental unit on April 25, 2020, at which point the Landlord began tossing their possessions out of a window onto the lawn. The Tenant stated that a large number of their irreplaceable personal possessions were not returned to them and that of the personal possessions that were returned, most were damaged or soiled beyond repair as the Landlord had left them out in the rain or soaked them with sour milk and booze. The Witness H.H. corroborated this testimony in the hearing and the Tenant submitted a photograph showing numerous personal possessions strewn about a lawn. The Tenant submitted

an itemized list of the damaged or missing personal possessions and an accounting for the value of these possessions, which they stated was determined through taking the market value for replacing the items, less some depreciation, or the value at which the items could have been sold in their current condition. Despite the above the Tenant stated that some of the items damaged or not returned were in fact sentimental, invaluable and irreplaceable; however, they stated that they placed a reasonable and accurate value on as many of the possessions as they could.

The Tenant stated that as a result of the illegal lockout, they were left homeless in the middle of a pandemic and without the funds to rent another place for March as the Landlord did not return their rent. The Tenant stated that this was very traumatic for them and that they were forced to move in with numerous family members in a very small space as a result. The Tenant was very emotional when they stated that the Landlord had an utter disregard for the law and for their safety during a pandemic and that the Landlord effectively stole the last time they had left with their long-time friend and roommate who died shortly thereafter. The Tenant and their advocate stated that the Landlord therefore caused the Tenant extreme and irreparable emotional harm and loss and although the Tenant stated that the value of this loss is extremely hard to quantify, they sought aggravated damages in the amount of \$2,500.00, which they and their Advocate believe is very reasonable under the circumstances.

No one appeared on behalf of the Landlord to provide any evidence or testimony for my consideration, despite my finding earlier in this decision that they were deemed served with sufficient notice of the hearing and a copy of the Application and the documentary evidence before me.

Analysis

Based on the affirmed and uncontested testimony of the Tenant, the Land Title document, and the shelter information form in the documentary evidence before me, I am satisfied that the Landlord purchased the rental unit from the previous owner, who was the Tenant's roommate, in July of 2019, and that the Tenant entered into a tenancy agreement with the Landlord on approximately July 15, 2019. As a result, I find that the tenancy therefore transitioned from one that was excluded under section 4(c) of the Act, to one that was not, on July 15, 2020.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that a landlord or

tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. Residential Tenancy Policy Guideline (Policy Guideline) #16 states that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It also states that 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.

Policy Guideline #5 discusses what the requirement to mitigate damage or loss means and specifies that the person claiming compensation has the burden of proving they minimized the damage or loss.

Section 31(1) of the Act states that a landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property. I accept the uncontested and affirmed testimony of the Tenant and the Witnesses that the Landlord changed the locks to the rental unit on March 2, 2020, without the Tenant's agreement and without providing the Tenant with a new key. As there is no evidence or testimony before me that the Landlord had a right under the Act to change the locks without providing the Tenant with a key, I therefore find that the Landlord breached sections 31(1) and 31(1.1) of the Act, when they locked the Tenant out, unlawfully ending the tenancy in the process.

Based on the affirmed and uncontested testimony of the Tenant, the Advocate and the Witnesses in the hearing, and the documentary evidence before me for consideration, I am satisfied that the Tenant was unlawfully locked out of the rental unit by the Landlord on March 2, 2020, and therefore suffered a loss in the amount of \$400.00, the amount of rent paid to the Landlord for March. I am also satisfied that the Landlord damaged or failed to return possessions belonging to the Tenant when they were unlawfully locked out of the rental unit in the amount of at least \$4,345.00. I accept the Tenant's uncontested and affirmed testimony and written statements that they sought police intervention for the lockout but were ultimately unable to regain entry to the rental unit,

other than to briefly gather a small amount of their possessions in the presence of police. As a result, I find that the Tenant attempted to mitigate the loss resulting from the Landlord's breach of the Act to the best of their abilities.

Based on the above, I therefore find that the Tenant is entitled to reimbursement of \$400.00 in rent paid to the Landlord for March of 2020, and compensation in the amount of \$4,345.00 for damaged and unreturned property. I also order the Landlord to immediately return any property belonging to the Tenant, which remains in their possession.

Further to this, I am satisfied that the Landlord caused the Tenant intangible, irreparable and immeasurable amounts of emotional harm, damage and loss as a result of the lockout and the destruction and retention of their possessions, which cannot adequately be compensated for by simply returning their rent for March or providing compensation for their lost and damaged possessions. As a result, and pursuant to Policy Guideline #16, I find that the Tenant is therefore entitled to the \$2,500.00 in aggravated damages sought, which in my mind, is a very reasonable amount of compensation considering the severity of the Landlord's breaches of the Act and the harm done to the Tenant as a result.

Although the Tenant stated that there was a mutual agreement between themselves and the Landlord to be compensated \$1,200.00 when it was time for them to move out so that they would not be left homeless, no documentary or other evidence was submitted in support of this claim and there is no provision under the Act which would require the Landlord to do so. Further to this, the Tenant's claim regarding this agreement is wholly inconsistent with the action taken by the Landlord to end the tenancy. As a result of the above, I am not satisfied by the Tenant on a balance of probabilities that any such agreement existed, and I therefore dismiss this portion of the Tenant's claim without leave to reapply.

Based on the above and pursuant to section 67 of the Act, the Tenant is therefore entitled to a Monetary Order in the Amount of \$7,245.00 and I order the Landlord to pay this amount to the Tenant.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **\$7,245.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord 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.

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: September 16, 2020

Residential Tenancy Branch