



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking monetary orders from the landlord for return of the security deposit and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for plumbing costs, moving expenses, food thrown out, financial loss in stocks, and compensation for an illegal eviction?

Background and Evidence

The tenant testified that this month-to-month tenancy began on December 1, 2019 and ended on March 1, 2020. There is no written tenancy agreement, however rent in the amount of \$1,750.00 was payable on the 1st day of each month and there are no rental arrears. On October 30, 2019 the landlord collected a security deposit from the tenant in the amount of \$875.00 which is still held in trust by the landlord, and no pet damage

deposit was collected. The tenant has provided a copy of the e-transfer for the security deposit of \$875.00 dated October 30, 2020 as evidence for this hearing. The rental unit is a suite in the lower level of a 2-storey house and the landlord resided in the upper level.

The tenant further testified that no move-in condition inspection report was completed at the beginning of the tenancy but the parties had made arrangements for a move-out condition inspection to take place on March 1, 2020 but the landlord didn't show up. The tenant provided the landlord with a forwarding address by email that day and waited for awhile, and then sent a letter to the landlord by registered mail on May 14, 2020 which also contained the tenant's forwarding address. The tracking system shows that the landlord received it on May 15, 2020. The landlord has not returned any portion of the security deposit to the tenant and has not served the tenant with an Application for Dispute Resolution claiming against the security deposit. The tenant claims recovery of double, or \$1,750.00.

The tenant also claims the equivalent of 12 months rent as compensation for an illegal eviction as well as other financial losses.

Laundry was supposed to be included in the rent but there was none, and the landlord told the tenant that she could do laundry at his suite once per week. The tenant is a cleaner and had towels and other items in the landlord's dryer and the tenant texted him but he didn't respond. The tenant had to get her laundry that evening so she went into the landlord's suite to get it when he wasn't home. The landlord noticed and yelled at the tenant about being in his unit and told the tenant she had to get out.

On February 16, 2020 the tenant had her children at the rental unit during the Family Day long weekend. At 9:00 p.m. the landlord went to the rental unit and said the tenant wasn't looking for a new place fast enough and said that the tenant had to move out. The landlord made the tenant's life miserable until she finally moved out, and he forced her into panic mode. The situation was so insane the tenant had to get counselling. It seemed that the landlord instantly decided he didn't want a tenant; cornering the tenant about how long it took to do her laundry.

Further, to offset heating expenses, the tenant bought wood and used wood heat. The landlord then said he wanted more money for utilities, but the tenant expected to pay less because she didn't have laundry. He had a habit of going downstairs to yell at the tenant about once per week.

After the Family Day long weekend, the tenant was trying to get ready for work with 2 children at home who were asleep. The landlord texted the tenant telling her to stop yelling at her kids, and she responded that they were asleep. The landlord went to the

rental unit and “danced around with all kinds of accusations.” The tenant told him that she didn’t know how to respond, but he kept on her, and yelling outside the tenant’s window that he wanted to talk. The tenant had to go to work, and the landlord wouldn’t let her pass him to get into her vehicle. He finally allowed her to pass. When the tenant arrived home, the landlord did it again. The landlord harassed the tenant to the point that the tenant had to call police, who confirmed that the landlord could only contact the tenant in writing and was not allowed to go to the tenant’s door unannounced.

The tenant raised other deficiencies with respect to the rental unit and testified that this was the first tenancy since the landlord had renovations completed, but certain things were not finished. The dishwasher was not connected, the oven was not clean and stove was unusable. The tenant asked for the landlord’s assistance to get a plug out of the tub but the landlord said it wasn’t his problem and refused to help. Same with the plugged toilet, and the tenant had to call a plumber. The tenant has provided a receipt for that expense in the amount of \$250.95.

The tenant’s Monetary Order Worksheet sets out the following claims, for a total of \$27,397.16:

- \$250.95 for the plumbing invoice;
- \$1,907.85 for moving expenses;
- \$200.00 estimate for food thrown out;
- \$4,038.36 for financial losses due to moving; and
- \$21,000.00 being 12 months rent for an illegal eviction.

The landlord testified that the tenant walked through the rental unit several times prior to moving in. The landlord is a chiropractor and the tenant didn’t pay the landlord for his services in that regard. The parties were supposed to be helping each other out, but the tenant went into the landlord’s home without his permission. Then the tenant started to push landlord obligations on the landlord.

The tenant chose to move out after police were there, and police said that the tenant was not to contact the landlord. The landlord got 15 to 20 incoherent demands per day from the tenant. The police told the tenant that her best option would be to move out and the tenant agreed.

Further, the tenant ruined some things in the garage caused by garbage in there. The landlord does not trust moving companies, however the tenant hired a moving company who was going in and out of the rental property including the garage.

The landlord had a stack of wood prior to the beginning of the tenancy and the tenant was taking a portion of the wood that belonged to the landlord. Then, the landlord's dog got into the trash that the tenant left, and got sick. The landlord had to take the dog to a vet.

The rental unit was not re-rented but a friend stayed there for awhile after the tenant vacated. The landlord's clinic is now in the rental unit.

The landlord testified that it is completely unreasonable to pay the tenant 12 months rent. There was more harassment from the tenant than the landlord, and numerous text messages have been provided by the tenant for this hearing. The tenant created the situation.

The landlord was not aware that he had to apply for dispute resolution to keep the security deposit.

Analysis

Firstly, with respect to the security deposit, I accept the landlord's testimony that he didn't know he had to apply for dispute resolution to keep the deposit. However, I have no discretion in that regard. The *Residential Tenancy Act* states (underlining added):

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,

the landlord must do one of the following:

- (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.

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The tenant testified that the landlord was provided with a forwarding address in an email on March 1, 2020 and then again by registered mail on May 14, 2020 which the landlord received on May 15, 2020. The landlord did not dispute that testimony, and the tenant has provided proof of sending the registered mail. I find that the landlord received the forwarding address on May 15, 2020. The landlord did not return the security deposit and did not make an Application for Dispute Resolution claiming against it, and therefore, the landlord must repay double, or \$1,750.00.

The tenant has also claimed the plumbing expenses of \$250.95 and has provided a copy of an Invoice. The *Act* states that a tenant may make emergency repairs if the landlord was notified and failed to make the repairs. Emergency repair is defined as urgent, necessary for the health or safety of anyone or preservation of the property and is for the purpose of repairing certain elements of the rental unit, including damaged or blocked water or sewer pipes or plumbing fixtures. Further, the tenant must make at least 2 attempts to notify the landlord and give the landlord reasonable time to make the repairs. The plumbing invoice provided by the tenant states that the plumber attended the call-out for a clogged toilet, ran an auger through and tested the toilet 5 times to ensure the blockage was cleared. The tenant has not provided evidence that she made the request twice, but testified that the landlord said it was not his problem. I am not satisfied that the tenant has met the test, and I dismiss the tenant's application regarding the plumbing invoice.

In order to be successful in a claim for damage or loss, the onus is on the claiming party to satisfy the test for damages, which includes mitigation. The tenant has provided copious amounts of evidence, and I have been through all of the text messages, photographs and other evidentiary material. I find it clear that the tenant has continuously badgered the landlord, thereby failing to mitigate any loss of quiet enjoyment. The tenant didn't like the responses from the landlord but continued to text and argue by text messaging.

I also find that the tenant did not vacate because the landlord illegally evicted the tenant, but the tenant chose to move from the rental unit on the advice of police. The tenant's claims for moving expenses, 12 month's rent for an illegal eviction, financial loss of stocks sold and food are hereby dismissed.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,750.00.

The balance of the tenant's application is hereby dismissed without leave to reapply.

This order is final and binding and may be enforced.

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: October 29, 2020

Residential Tenancy Branch