



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, CNR-MT, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on September 29, 2020 (the "Application"). The Tenants applied as follows:

- For compensation for monetary loss or other money owed;
- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities and for more time to dispute the notice;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement; and
- For reimbursement for the filing fee.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties agreed the Tenants moved out of the rental unit October 24, 2020. Given this, the Tenant withdrew the following requests:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities and for more time to dispute the notice; and
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

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

The Tenant confirmed receipt of the Landlord's evidence.

The Landlord testified as follows. He received the hearing package October 06, 2020. He did not receive an amendment. He received moving receipts, tuition receipts and photos November 12 or 16, 2020. He is prepared to address the Application.

The Tenant agreed he sent the hearing package around October. The Tenant testified that he sent the amendment to the Landlord by registered mail. The Tenant testified that everything submitted was served on the Landlord by registered mail. The Tenant agreed he sent the second package to the Landlord November 13, 2020. The Tenant advised that he sought return of the security deposit in the second package sent November 13, 2020.

The Tenant could not point to a Monetary Order Worksheet or list of amounts sought. It sounded as though the Landlord had received a list; however, this list was not before me. The Tenant outlined the following requests:

1. \$250.00 for moving costs and a U-Haul;
2. \$1,700.00 to drop an online course;
3. \$1,100.00 for damage to a television; and
4. \$600.00 for return of the security deposit.

The Tenant also said he was seeking compensation for damage to his daughter; however, the Tenant could not say what amount of compensation he was seeking. I told the Tenant I would not consider this request given he could not provide an amount.

The Landlord advised that he has sought to keep the security deposit on File Number 1. The Landlord asked to defer the security deposit issue until the hearing on File Number 1 which is set for February 26, 2021. I looked File Number 1 up and determined that the Landlord's Application for Dispute Resolution was filed November 08, 2020. I also confirmed the Landlord is seeking to keep the security deposit.

I told the Tenant I would not consider a request for return of the security deposit as the Tenant did not seek this in the original Application and agreed he only indicated he was seeking this in the second package sent to the Landlord November 13, 2020. I found that the Landlord had sought to keep the security deposit before the Tenant sought return of the security deposit and therefore the security deposit issue should be dealt with on File Number 1.

At the end of the hearing, the Tenant said he wants \$200.00 as reimbursement for the filing fee on this file and a previous file. Parties cannot claim for filing fees paid on

previous RTB files as the filing fees for those previous files should have been sought and dealt with on those previous files. Given this, I did not consider this request.

The parties were given an opportunity to present relevant evidence and make relevant submissions. Pursuant to rule 7.4 of the Rules of Procedure (the "Rules"), I told the parties they must point to the evidence they were relying on for their position during the hearing. The Landlord did so. The Tenant was not able to do so. However, I have reviewed all of the Tenant's evidence in making this decision. I have also considered all oral testimony of the parties and the Landlord's documentary evidence pointed to during the hearing. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

As stated, I considered the following claims by the Tenants:

1. \$250.00 for moving costs and a U-Haul;
2. \$1,700.00 to drop an online course; and
3. \$1,100.00 for damage to a television.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started January 01, 2016.

1. \$250.00 for moving costs and a U-Haul

The Tenant testified as follows. On July 01, 2020, the Landlord told the Tenants they had to move to another property owned by the Landlord. The Landlord forced the Tenants to move against their will. The Tenants did not willingly move. The Landlord told the Tenants he would pay for their moving costs. The Tenants moved and lived at the property for two months. When the Tenants returned to the rental unit, the Landlord refused to pay their moving costs. The Tenants then moved again October 24, 2020 and spent money doing so.

The Tenant said he had no written proof that the Landlord said he would pay the Tenants' moving costs.

The Tenant acknowledged the Tenants moved October 24, 2020 due to an Order of Possession being issued on a previous RTB file. The Tenant submitted that he should be reimbursed for moving costs in relation to the October 24, 2020 move because the Landlord lied about there being unpaid rent. The Tenant acknowledged the Tenants did not seek review of this prior RTB decision.

The Landlord testified as follows. The Tenants agreed to move and did so willingly. He did not agree to pay for the Tenants' moving costs. He is relying on page nine and ten of his reply. He is not liable for moving costs in relation to the October 24, 2020 move because he had an Order of Possession.

2. \$1,700.00 to drop an online course

The Tenant testified as follows. He had to drop classes because the Landlord was coming to the rental unit, unplugging the internet and bringing contractors to the rental unit. He could not concentrate due to this. The Landlord asked the Tenants to move to the other property and there was no internet there which resulted in him having to drop another class. He also had to drop a class because of the Order of Possession issued. The Landlord disturbed his online courses. He is relying on a text message in evidence and receipts for his courses.

The Tenant could not point to which text message in evidence he was relying on.

The Landlord testified as follows. He should not be liable for this issue. The Tenants willingly moved to the other property as shown in his evidence. A text at page eight of his evidence shows he covered \$250.00 of the Tenant's tuition fees. The Tenant was thinking about dropping classes in June. The parties already negotiated a credit for hardship, and it was agreed no further credit would be given. He did not disrupt the Tenant. One contractor attended the rental unit. There were no further disruptions. The new property did have internet and he gave the Tenant a password for it; however, the Tenant chose to move his own internet service to the new property.

The Landlord relied on pages eight to ten of his reply. The Landlord testified that he had only received the receipts for the Tenant's courses and not a relevant text message.

3. \$1,100.00 for damage to a television

The Tenant sought this compensation based on televisions being broken during the move between the rental unit and the new property and from the rental unit pursuant to the Order of Possession. The Tenant acknowledged the Landlord did not break the televisions and relied on the submission that the Landlord was to blame for the moves which resulted in the televisions being broken.

The Landlord testified that he did not touch the Tenants' property and it was the Tenants' fault the televisions broke.

Analysis

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

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

(2) A...tenant who claims compensation for damage or loss that results from the [landlord'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 rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

1. \$250.00 for moving costs and a U-Haul

I am not satisfied based on the evidence provided that the Landlord forced the Tenants to move. The parties disagreed about this.

I have reviewed all of the Tenants' evidence. The only evidence I see to support the Tenant's assertions that the Landlord forced the Tenants to move are text messages dated June 03rd and 04th and an undated text message. The Tenant raises the moving issue in these text messages. However, the Landlord submitted text messages dated June 16th to June 20th showing the Tenant agreed to move and therefore I do not find the June 03rd and 04th text messages sufficient to support the Tenant's position. In relation to the undated text message, this appears to be from after the Tenants moved to the other property and back to the rental unit given the content. However, I do not know the date of the text message and therefore do not find the undated text message to be compelling evidence supporting the Tenant's position.

As stated, the Landlord has provided text messages showing the Tenants agreed to move to the other property.

In the circumstances, the Tenants have failed to prove they were forced to move to the other property. I am not satisfied the Tenants are entitled to compensation on this basis.

I am not satisfied based on the evidence provided that the Landlord agreed to pay the Tenants' moving costs. The parties disagreed about this. The Tenant said this was a verbal agreement and could not point to documentation of the agreement. The Landlord did provide documentation, in the form of text messages, showing the Tenant agreed to his proposal which included that the Tenants would be responsible for all moving costs. In the circumstances, I am not satisfied the Landlord agreed to pay the moving costs and am not satisfied the Tenants are entitled to compensation on this basis.

In relation to the Order of Possession issued on File Number 2, the Adjudicator on File Number 2 determined that the Landlord was entitled to an Order of Possession and I am bound by that decision. Further, if the decision was obtained by fraud as alleged by the Tenant, the Tenants should have sought a review of the decision. The Tenants did not seek a review of the decision. Therefore, the Landlord was entitled to enforce the Order of Possession, the Tenants were required to move pursuant to the Order of Possession and the Landlord is not responsible for the costs associated with this. It is the Tenants' failure to pay rent or failure to seek a review of the RTB decision that lead to them having to move. The Tenants are responsible for the associated costs.

The Tenants are not entitled to compensation for this issue.

2. \$1,700.00 to drop an online course

As stated above, I am not satisfied the Landlord forced the Tenants to move and therefore am not satisfied the Tenants are entitled to compensation on this basis.

The parties gave conflicting testimony about whether the Landlord disturbed the Tenant. I have reviewed all of the Tenants' evidence. I find there is insufficient evidence to support the Tenant's assertions that the Landlord disturbed the Tenant. I acknowledge that the text message dated June 04th raises tenancy issues. However, I am not satisfied one text message authored by the Tenant is sufficient to show a disturbance that lead to the Tenant dropping online classes. Nor do I find the undated text message compelling evidence of this issue given I do not know when it was sent. There is no further evidence of disturbances such as photos, videos, witnesses, witness statements or more formal correspondence between the Tenants and Landlord about disturbances. In the absence of further evidence, I am not satisfied the Landlord disturbed the Tenant such that the Tenant had to drop online classes. Therefore, I am not satisfied the Tenant is entitled to compensation on this basis.

The parties gave conflicting testimony about whether there was internet at the new property. I have reviewed all of the Tenant's evidence and do not see any documentary evidence to support the Tenant's assertions about internet. The Tenant has not provided sufficient evidence that there was no internet at the new property. Therefore, I am not satisfied there was no internet at the new property and am not satisfied the Tenants are entitled to compensation on this basis.

As stated above, the Order of Possession resulted from the Tenants failing to pay rent or failing to seek a review of the decision on File Number 2. Any financial loss resulting

from the Order of Possession is the responsibility of the Tenants and is not a basis for compensation.

The Tenants are not entitled to compensation for this issue.

3. \$1,100.00 for damage to a television

As stated above, I am not satisfied the Landlord forced the Tenants to move and therefore am not satisfied the Tenants are entitled to compensation on this basis.

As stated, any financial loss associated to the Order of Possession is the Tenants' responsibility and not the Landlord's responsibility.

Further, even if I had accepted that the Landlord forced the Tenants to move or unlawfully obtained an Order of Possession, I would not have found that the Tenants are entitled to compensation for damage to their televisions when this damage was not caused by the Landlord. The Landlord did not move the Tenants' belongings or damage the Tenants' televisions. Therefore, the Tenants or those who moved their belongings were responsible for ensuring their belongings remained undamaged during their moves and are responsible for any loss in this regard. The Tenants have no basis for this claim.

The Tenants are not entitled to compensation for this issue.

4. Filing fee

Given the Tenants were not successful in the Application, I decline to award them reimbursement for the filing fee.

Conclusion

The 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: December 21, 2020

Residential Tenancy Branch