Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation for loss, for the return of double the security deposit and to recover the cost of the filing fee.

This matter commenced on December 3, 2020 and was adjourned due to insufficient time. The interim decision should be read in conjunction with this decision.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

At the previous hearing date, the landlord confirmed they received the evidence of the tenant. The article student for the tenant had confirmed they received evidence from the landlord. However, at today's hearing it was apparent that the tenant did not have all evidence from the landlord. The article student stated they are not objecting to the landlord's evidence being permitted and want the hearing to proceed.

I note in the submission of the article student on behalf of the tenant they are seeking an administrative penalty to be imposed on the landlord in the amount of $5,000.00. I do not have the authority to apply administrative penalties. That must be done in a different process. The article student can contact the Residential Tenancy Branch and obtain information on the process.

I clarified at the hearing the tenant's legal name. The tenant stated that their legal surname is hyphened in the application. The tenant stated that their name in the tenancy agreement was correct as it was not hyphened at the time. As the tenant is

recognized by two different spellings of their surname, I find it appropriate to reflect both spellings of the tenant's surname in the style of cause as they are the same person.

The Residential Tenancy Branch Rules of Procedure 6.11. prohibits the recording of the dispute resolution hearing. If any recording is made and used for any purpose the party who made the recording will be referred to the Residential Tenancy Branch Compliance Enforcement Unit for investigation and may be subject to an administrative penalty of up to $5,000.00 for each day the contravention or failure continues.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for loss?
Is the tenant entitled to the return of the security deposit?

Background and Evidence

The parties agreed that the tenancy began on October 15, 2017. Current rent in the amount of $1,730.00 was payable on the first of each month. The tenant paid a security deposit of $850.00. Filed in evidence is a copy of the tenancy agreement.

The tenancy agreement shows that the tenant was allowed to rent the premises as an Airbnb when they are on holidays. The agreement also shows that the premises was rented unfurnished. Although there are other terms and condition, I have only referred to these as they are relevant to this decision.

The tenant claims as follows:

a.	Return of October 2019 rent, and utilities	$ 1,797.77
b.	Return of double the security deposit	$ 1,700.00
c.	Loss of personal property	$ 6,708.10
d.	Filing fee	$ 100.00
	Total claimed	**$10,305.21**

Return of October 2019 rent, and utilities

The article student for the tenant stated for most of the tenancy there were no issues; however, in September 2019 the landlord was becoming aggressive with the tenant and sent a series of abusive emails and text messages alleging that the tenant provided them with fake names, was trespassing, underpaying rent, and demanded that they share the profit when rented as an Airbnb.

The article student stated that the landlord keeps referring to the tenant by the wrong name and alleged she is giving a fake name; however, the landlord is misreading the tenant's name in the tenancy agreement, and they are using her last name rather than her first name.

The article student stated that the tenant's tenancy agreement shows that the tenant is allowed to use the premise for an Airbnb while they are on holidays.

The article student stated that on September 19, 2019, the landlord sent the tenant a text message that they have to share the profit of the Airbnb or they would be evicted.

Filed in evidence is a copy of the text message, marked exhibit "F", which was sent by the landlord, which reads,

> "If you want to continue operate Air B&B we demand a portion of the income you made from our unit (remove unit #) and this is negotiable. Owner give this last opportunity for you to agree or not agree before the end of September 2019. Or this will be owner's official serve of 30 days notice to end October 2019. Please decide. No explanation"
>
> [Reproduced as written.]

The article student stated that on October 2, 2019, the landlord sent the tenant several emails, and posted to the front door of the building an offensive letter. The article student stated that the emails sent to the tenant alleged that she had provided a false name, that they no longer recognize her as a tenant and then locked her out of the rental premises by deactivating the fobs and threatened the tenant with police action.

Filed in evidence is a copy of the email marked exhibit "I", dated October 2, 2019, which reads in part,

> "It is such a shame that you build up with lies since 2016 and you continue to do so may God have mercy on you … You prepared a Fake name in the contract and did not live at [rental unit removed] and let others to live to make profits for the last THREE years without permission – another big lie. … The Council, Management and Building Mangers had met me and three students are fully aware that you had made Fake Fobs to sell $35 to others and this is a crook and criminal and plus you are not a tenant in [rental unit removed] and entering with Fake illegal Fobs and therefore you are TRESPASSING. … we don't know who you really are with so many Fake names. My wife and I are the owners of this property and I know all the history and only I will decide and I don't recognize you as my tenant due to Fake names…"
>
> [Reproduced as written.]

Filed in evidence is a copy of the email marked exhibit "J", dated October 2, 2019, which reads in part,

> "1. All residents and owner now are fully award of your illegal entering the [name removed] with Fake Fobs and selling Fake Fobs which makes them scared. The building manager just took off the sign as people were so frightened. They told me you usually got in front the back door from garage. They will immediately call 911.
> 2. Due to the reason that the three students live in [unit number removed] feel very unsafe. … After talking to them I accepted them to become the legal tenant. …Do not enter nor bother my Legal Tenants of [unit number removed]. They will call police if you ever enter."
>
> [Reproduced as written.]

Filed in evidence is a photograph of a sign posted to the front door of the building on October 2, 2019, by the landlord, marked exhibit "L" which reads,

> "BEWEAR A FEMALE TALL MEXICAN WEARS HIGH HEELS USES FAKE FOBS TO ENTER IS NOT LIVING HERE. DO NOT LET HER IN. TAKE AWAY HER FOBS. CALL POLICE!"
>
> [Reproduced as written.]

The article student for the tenant stated that the landlord also sent the tenant an email on October 3, 2019, that the fobs were being deactivated. Filed in evidence is an email from the strata to the landlord, that was forwarded to the tenant by the landlord on October 3, 2019, marked as exhibit "M". The email reads in part.

> "To confirm our discussion on the subject matter of your current Unit situation related to past tenancies as they affect owner\tenant secure access to the building, we advise you of the following: For security measures….. we will be cancelling all building premises door access FOBS registered to your unit exception of FOBs you've retained in your physical possession. …"
>
> [Reproduced as written.]

The tenant testified that they did not live in the rental unit; however, her sister was living there in October 2019, at the time the landlord locked them out of the premise. The tenant stated she was not operating the premise as an Airbnb at that time. The tenant stated that because the landlord had deactivated her fobs, posted the offensive letter on the building door and was acting erratic, she did not go back to the rental unit as she felt threatened and did not know what to do. The tenant stated that her rent was paid for on October 1, 2019, and she should be entitled to the return of her rent because she was locked out.

The landlord testified that the tenant is not entitled to return of rent. The landlord stated the tenant's sister was not living in the rental unit as there were four young men living in the rental unit at the time who were going to school. The landlord stated that the tenant had sublet the premise and they called her "Maria" another false name used by the tenant.

The landlord testified that they did not lock out the tenant. The landlord stated on October 3, 2019, the tenant gave their 30 days' notice to end the tenancy and she also gave her subtenants notice, which was effective October 31, 2019. The landlord stated after the tenant's tenancy was over, they entered into a tenancy agreement with these young men which commenced on November 1, 2019.

Filed in evidence is a letter from these men which reads in part,

> "we were Maria's tenant since April 2018; $2,400 per month $33.50 interest per day late charges, bought fobs $33 each …"
>
> [Reproduced as written.]

The landlord admitted that they posted the letter to the window of the main entrance referred to above. The landlord stated that the tenant's fobs were never deactivated until January 2020, and the tenant could have accessed the premise.

Filed in evidence from the landlord is a text message dated January 3, 2020, which at the side of the text message the landlord writes by hand,

> "she gave her tenants 30 days notice. Her tenant lived at ... till end of 30 days notice (given by her) no one was evicted."
>
> [Reproduced as written.]

The context of the text message reads in part as follows,

> "Just an FYI. Per Strata Council directive on combating unsecure building access activities by know & unknown persons, all FOB IDs identified as either expired, unauthorize or duplicated …. Will be deactivated commencing close of business, Friday, January 3, 2020."
>
> [Reproduced as written.]

Filed in the landlords written statement is the following,

> "I was instructed by council to evict her or will face $1000 per day fine. But later we found she didn't live in the suite therefore no eviction given and we couldn't evict her tenants. After knowing Council found that she operated Air BB, making Fake Fobs and selling to people she could deny no more so she gave 30 days Notice on 3rd October 2017, (it was copied to … and Manager) …
>
> [Reproduced as written]

I had asked the landlord where in their evidence is a copy of the email dated October 3, 2019, where the tenant gave their notice to end tenancy. The landlord responded that it was the tenant's email and that they should have provided a copy in their evidence. The landlord confirmed they did not provide a copy of any email that showed the tenant gave notice to end the tenancy.

Loss of property

The article student for the tenant submits that the landlord's behaviour towards the tenant at the end of the tenancy was both erratic, and aggressive. The article student submits the landlord locked the tenant out of the rental unit and that the tenant was never able to collect their belongings, which consisted of furniture and personal belongings of her sisters. The article student submits that the monetary worksheet

provides details of the items that the tenant seeks compensation for in the total amount of $6,708.10.

The article student for the tenant submits that the tenant found an advertisement for the rental unit, which advertised the rental unit as fully furnished and available on March 1, 2020. The article student stated the furniture in the landlord's advertisement belongs to the tenant as this is the same furniture shown in the tenant's advertisement of their Airbnb. Filed in evidence is a copy of an advertisement showing the rental unit is available to rent for March 1, 2020, and the rent includes the premise furnished and a copy of the tenant's Airbnb advertisement.

The tenant testified that they were locked out of the premise and due to the landlord's actions they were not able to retrieve their belongings. The tenant stated that they purchased most of their furniture in late 2017 and early 2018, from IKEA and the hide abed/couch and ghost chairs were purchased in 2018/2019.

The landlord testified that they rented the premise fully furnished to the tenant. The landlord stated that the tenant removed their furniture which was witnessed and replaced their furniture with their her own. The landlord stated their furniture has not been returned and they should be entitled to compensation.

The landlord testified that they are not responsible for the tenant's belongings as they were left behind by the tenant in the care of her subtenants when she vacated the premises. The landlord stated that the hide-a-bed couch and bed were later disposed of because it was old and had cockroaches. The landlord stated that these tenants left in September 2019 and they have no idea what happened to the remainder of the tenant's belongings.

Return of Security Deposit

The article student for the tenant stated that their office sent the landlord a letter requesting the return of the security deposit on June 12, 2020, which was acknowledged received by the landlord. The article student stated that the landlord did not claim against the deposit within 15 days of receipt of the address, nor was it returned to the tenant. The article student stated that the tenant is entitled to double the return of security deposit in the amount of $1,700.00.

The landlord testified that the tenant gave her 30 day notice to end tenancy. The landlord stated that the Act requires both the landlord and tenant to conduct an

inspection. The landlord stated that they decided the inspection should occur at 4pm on October 31, 2019, as that was when her subtenants were back from school. The landlord stated they had eight witnesses at the inspection; however, the tenant did not attend. The landlord stated that the tenant was sitting out in her car; however, refused to come to the unit for the inspection.

The tenant argued they never agreed to any date or time for an inspection, and they were never notified by the landlord of a date or time of an inspection. The tenant stated they were never sitting outside in their vehicle on this date or time and never refused to do an inspection. The tenant stated they were locked out of the premise and informed if they ever return the police would be called.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Return of October 2019 rent, and utilities

In this case, I do not accept the landlord's evidence that the tenant gave notice to end their tenancy on October 3, 2019 to end the tenancy on October 31, 2019. I find it more likely than not that the landlord is fabricating a story, which is not reasonable based on the evidence and supporting evidence before me.

I find it more likely than not that the landlord locked the tenant out of the premise on October 2, 2019, based on the following.

The evidence filed by the tenant clearly shows that on September 19, 2019 the landlord wanted to end the tenancy if the tenant did not share the profits obtained from operating and Airbnb. The landlord's written submission indicates there was no requirement for the landlord to give notice to end the tenancy because the tenant was not living in the premise.

The email of the landlord dated October 2, 2019 supports that the landlords did not recognize her as a tenant due to the discrepancy in their name in the tenancy agreement, as the landlord referred to the tenant by her surname and misspelled her name. However, that was the landlord's own fault, as they were reading the tenancy agreement incorrectly and their own name is spelt backwards in that agreement. Further, even if I accept the tenant had been called by a different first name "Maria", it does not give the landlord the right to not recognize her as a tenant. EG had paid the rent since 2017 and was the legal tenant on the tenancy agreement and therefore was entitled to have full access to the premise that they paid to rent, even if they were not living there.

The email of October 2, 2019 further supports that the landlord had accepted the tenant's subtenants, as their own legal tenants and informed the tenant if they attended the premise that the police would be called.

On October 2, 2019, the landlord posted a letter on the door of the building complex, stating the tenant did not live there, used a fake fob to access the premise and urged other occupants of the building to call the police if she should be seen at the property.

On October 3, 2019, the landlord sent the tenant an email which indicated their fobs were cancelled. I do not accept the evidence of the landlord that it was not until January 2020, that tenant's fobs were deactivated. This is contrary to the email the landlord sent to the tenant on October 3, 2019. Even if it was true; how would the tenant have known that at the time.

I find the above behaviour makes no sense whatsoever if there was no intent of the landlord to end the tenancy by locking the tenant out of the rental premise on October 2, 2019. I do not find the landlord credible on the issue of locking the tenant out of the premise.

However, I do not accept the tenant's evidence that their sister was living in the premise at the time they were locked out. There is no supporting evidence filed by the tenant to prove this, such as an affidavit from the sister, or proof of residency.

Even, if I accept the landlord's evidence that the tenant was subletting the premise at the time, which may have been a breach of the tenancy agreement. I find the landlord still did not have the right to lock the tenant out of the premise, threaten the tenant with police action or to declare these young men were now the landlord's legal tenants.

The tenant had paid the rent and was the person responsible for the premise at the time and had the right to access the premise until such time the tenancy legally ended in accordance with the Act. The landlord could have issued a One Month Notice to End Tenancy for Cause, for subletting without the written consent of the landlord, in accordance with the Act. Rather, they locked the tenant out of the premise and did not end the tenancy in one of the permissible manners as provided by section 44 of the Act.

Based on the above finding, I find the landlord breached the Act, when they locked the tenant out of the premise on October 2, 2019. I find due to the landlord's breach that the tenant is entitled to the return of October 2019 rent, and the utilities paid for October 2019, in the amount of **$1,797.77.**

Loss of property

I am not satisfied that the landlord rented the premise to the tenant as fully furnished and that is not the issue before. Should the landlord feel that they are entitled to compensation they must make their own application for dispute resolution.

In this case, the furniture subject to the hearing has been acknowledged that it was the property of the tenant.

I find the landlord did not give the tenant the opportunity to retrieve their property and it was the landlord's unreasonable behaviour on October 2nd and 3rd, that prevented the tenant from attending the premises.

While I accept these items may have been used for the tenant's subtenants during their tenancy with the tenant; however, as soon as the landlord locked the tenant out of the premises and claimed her subtenants, as the landlord's legal tenants; the landlord became responsible for that property. Even if the landlord considered the property was abandoned, they still were required to comply with section 24 of the Residential Tenancy Regulations, which is to store the tenant's personal property in a safe place and manner.

I do not accept that the hide-a-bed couch and bed had to be disposed of due to cockroaches as cleaning and treating the furniture would be reasonable. Even if I accept the landlord's testimony, which I do not, there was no evidence that the rental unit was infested at the time the tenant was locked out.

I further do not accept the landlord's evidence that the furniture was taken by the tenant's subtenants, as she was not their landlord at the time. The evidence of the landlord was that these tenants vacated the premise in September 2020. That testimony directly conflicts with the landlord's advertisement showing the rental unit was available for March 1, 2020. It is not reasonable that the unit would be vacant on March 1, 2020, yet these other tenants were still in the premise until September 2020. That is a seven month discrepancy and does not have the ring of truth.

Further, I find it would be unreasonable to be advertising the rental unit as furnished showing the tenant's furniture in the advertisement if that was not the furniture to be included in the rent. I find it more likely than not that the landlord kept the tenant's property for their own use. I find due to the actions of the landlord that the tenant suffered a loss.

In this case, the tenant has provided a list of items #4 to #16 in their monetary worksheet in the amount of $4,258.10, this is supported by the retail printouts. As this value is greater than fair market value and not fair market value at the time the tenant was locked out, I find it reasonable to depreciate the value by 10%. Therefore, I find the tenant is entitled to recover the fair market value of their furniture in the amount of **$3,832.29.**

I have not awarded the tenant any cost for bed linens with the estimate value of $450.00, as used bed linens, especially if used for an Airbnb or sublet, would have no fair market value. Therefore, I decline to award any compensation for item #17.

I have also not awarded the tenant any cost for loss of personal items for her sister, with the estimate value of $2,000.00. As I have previously found I was not satisfied that the sister was living there and there is not details of what those said items were. Therefore, I decline to award any compensation for item #18.

Return of Security Deposit

In this case, I am not satisfied that the landlord has proven that the tenant extinguished their right to the return of the security deposit by failing to participate in the move-out condition inspection.

As I have found the tenant was locked out of the premise on October 2, 2019, and there was no evidence that the tenant gave notice to end their tenancy on October 31, 2019. I find it would be unreasonable for the landlord to expect the tenant to be at the premise on October 31, 2019 at 4:00pm, especially since the tenant was notified by the landlord that the police would be contacted should they attend the building.

Further, a move-out condition inspection must be pre-arranged and mutually agreed to by both the landlord and tenant. The landlord provided no evidence such as text messages or emails that there was any agreement with the tenant to attend the premise on October 31, 2019 at 4:00pm. I find it highly unlikely that the landlord had any contact with the tenant after they had locked the tenant out of the premise on this subject. Furthermore, if the parties did not agree on a date and time, it was the landlord responsibility to serve the tenant with a Notice of Final Opportunity to Schedule a Condition Inspection. I find the landlord has provided no supporting evidence that there was an agreed upon date of October 31, 2019 at 4:00pm or that they provide the tenant with a second opportunity by issuing this notice in the proper form.

I am satisfied that the landlord had received the tenant's forwarding address by letter sent on June 12, 2020. I find the landlord did not make an application for dispute resolution or return the deposit within 15 days. Therefore, I find the landlord must pay to the tenant double the deposits pursuant to section 38(6) of the Act, in the total amount of **$1,700.00.**

I find that the tenant has established a total monetary claim of **$7,430.06** comprised of the above described amounts and the $100.00 fee paid for this application. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant is granted a monetary order in the amount of **$7,430.06**.

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 24, 2021

Residential Tenancy Branch