Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

Two previous hearings were held before me in relation to the above noted Application on March 5, 2021, and April 15, 2021. Further to this, I accepted written submissions from the parties after the conclusion of the April 15, 2021, hearing in relation to the matter of jurisdiction. As a result, three previous Interim Decisions were also rendered by me, copies of which were sent to the parties by the Residential Tenancy Branch (the Branch), regarding the adjournments and my finding in relation to the matter of jurisdiction. A previous Decision also exists in relation to the Tenant's request for substituted service. For the sake of brevity, I will not repeat here the numerous and lengthy matters covered or the orders made by me in the previous Interim Decisions or in the Decision related to the Tenant's request for substituted service. As a result, the Interim Decisions and the Decision regarding the Tenant's request for substituted service should be read in conjunction with this Decision.

Despite the Above, I find it important to note that I concluded in the Interim Decision dated June 15, 2021, that I had jurisdiction to hear and decide the Tenant's monetary claims, as I was satisfied on a balance of probabilities that a tenancy to which the *Residential Tenancy Act* (the *Act*) applies existed between the parties.

The final hearing was therefore reconvened before me by telephone conference call on July 8, 2021, at 9:30 AM and was attended by the Landlord, the Tenant, and the Tenant's Advocate. All testimony provided was affirmed.

While I have considered the documentary evidence and the testimony before me for review and consideration, not all details of the submissions and arguments are reproduced here. Only the relevant and important aspects of the claims and my findings are set out below.

Issue(s) to be Decided

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

Background and Evidence

As set out in the Interim Decision dated June 15, 2021, I have already found that a residential tenancy to which the *Act* applies existed between the parties, which commenced on November 4, 2018. In the tenancy agreement it states that rent is $300.00 per month, less any eligible deductions for the cost of food purchased for and provided to the Landlord's children; however, the parties acknowledged at the hearing that no rent was ever paid by the tenant and that no eligible expenses were ever claimed. Although the tenancy agreement stated that a $1,500.00 pet damage deposit was required, the parties also acknowledged at the hearing that no deposit was ever paid.

The parties agreed that the Tenant, who was employed as the Landlord's nanny, left on vacation on January 10, 2019, leaving the majority of their belongings behind in the rental unit. The Tenant and their advocate stated that upon the Tenant's return from vacation on January 29, 2019, they discovered that they were locked out of the rental unit without access to their belongings, which caused them significant emotional and financial hardship and distress. The Tenant stated that the lock-out prevented them from accessing their food and belongings, including a purse in which cash to pay their pet sitter was located, leaving them with no place to stay, no food, no access to their belongings, and inadequate clothing for the current weather conditions. The Tenant stated that they were forced to bring their pet sitter with them to the bank in order to pay them, and to stay in a hotel until they were able to find alternate suitable accommodation. The Tenant and their Advocate stated that the Landlord was refusing to provide them with timely access to the rental unit, and as a result, they were also forced to incur costs for food and other incidental items while awaiting access to their belongings.

The Tenant sought reimbursement of $768.25 in hotel costs between January 29th – February 6th, $800.00 in rent paid for February 2019 at their new rental unit, $225.82 for food and incidentals they purchased when they could not access their belongings, and $250.00 for food they were prevented from accessing that was left behind in the rental unit. The Tenant and their Advocate stated that the Tenant mitigated their losses by repeatedly attempting to gain access to the rental unit and their belongings from the

Landlord, without success, moving to a cheaper hotel after the first night, purchasing only the most economical and necessary food and incidental items, and by expediently securing new permanent housing at a reasonable rate to avoid further hotel costs. Although the Tenant acknowledged that they paid for a hotel until February 6, 2019, as well as full rent for February 2019 at their new rental unit, they and their Advocate stated that the Tenant's focus was on securing new permanent accommodation quickly, and therefore they were not focused on or in a position to negotiate pro-rated rent for February with their new Landlord. The Tenant and their Advocate also stated that the Tenant moved into the rental unit on February 5, 2021, but after the check-out time for the hotel and that the Tenant was therefore billed until February 6, 2019.

The Tenant and their Advocate stated that the Tenant is not seeking any loss of rent past February, as the Landlord could have served the Tenant with a One Month Notice to End Tenancy for End of Employment (One Month Notice) in January 2019, which would have ended the tenancy effective the end of February 2019. Although the Tenant and their Advocate acknowledged that the Landlord had grounds to end the tenancy with a One Month Notice due to the end of the employment relationship to which the tenancy related, they argued that the Landlord instead locked the Tenant out contrary to the requirements of the *Act*, resulting in the above noted losses to the Tenant.

Although the Landlord acknowledged changing the locks to the rental unit and the garage access code shortly after the Tenant left on vacation, they stated that they believed that the *Act* did not apply, as they believed it was shared accommodation, and that they had been advised as much by the RCMP. As a result, the Landlord argued that they did not believe that any proper notice was required to end the tenancy and that they were explicitly advised by the RCMP that they could simply change the locks and remove the Tenant's belongings as the *Act* did not apply. The Landlord also stated that the Tenant had been warned that this would occur if they went on the vacation, as the Tenant had only been approved to take a 10 day vacation from their nanny position and was attempting to extend the length of the vacation without approval. The Landlord stated that the Tenant was advised before leaving that if they left on the unauthorized vacation, they would need to remove their belongings before leaving as a new live-in nanny would be hired, who would require use of the rental unit. The Landlord stated that the Tenant chose not to do so, or to make any alternate accommodation arrangements for when they returned, and that the Tenant's loss of access and the hardship and stress created by the lock out was therefore the result of their own actions.

The parties disputed what efforts were made by the Tenant to gain access to their belongings upon their return and what efforts the Landlord made to comply with any

requests and to grant the Tenant expedient access to their belongings upon their return. The Tenant and their Advocate argued that the Tenant made numerous reasonable requests for access, which were denied, and that the Landlord and the Landlord's former spouse made it very difficult for the Tenant to gain access. The Landlord denied these allegations, stating that the Tenant made very few efforts to access their belongings and refused several offers for expedient access to gather necessities upon their return. Although the parties agreed that the police were involved, they disagreed about when and at which parties request.

In addition to the above noted claims, the Tenant sought $4,224.00 for items they state went missing or were damaged when the Landlord unlawfully locked them out and packed up their possessions, including but not limited to a silver necklace the Tenant valued at $150, a gold nugget the Tenant valued at $1,300.00, a dining table the Tenant valued between $1,000.00 - $1,100.00, a mattress the Tenant valued at $350.00, missing electronics that the Tenant valued at $699.00, $185.00 for various other missing property; and $315.00 for missing incidental items.

The Landlord denied that the Tenant's possessions had been lost or damaged when they were packed up and moved to the garage and stated that in fact, the Tenant had very few possessions in the rental unit to begin with, as it was already fully furnished. The Landlord denied that the Tenant had any furniture at all in the rental unit and while they acknowledge that the Tenant had some furniture in the garage, they stated that the Tenant had placed it there at the start of the tenancy and that it was not moved or touched by anyone until the Tenant moved it out themselves. The Landlord also argued that the Tenant had failed to submit evidence establishing ownership of the majority of items claimed as lost or damaged by the Landlord, such as the gold nugget, electronics and jewelry or proof of their value and called into question several photographs provided by the Tenant allegedly showing damage caused by the Landlord, as they were undated. As a result, the Landlord argued that they could have been taken at any point in time, including the intervening time between the end of the tenancy, the filing of the Application and the service of the evidence on the Landlord, which is a period spanning several years.

The Tenant and their Advocate argued that a witness who could have corroborated the possession of several items was now deceased, and that it is common for people not to have corroborative evidence to establish the ownership and value of personal items, including jewelry.

Finally, the Tenant sought $3,000.00 in aggravated damages for the extreme amount of stress and emotional harm caused by the unlawful lockout, including but not limited to the need for the Tenant to stay in a hotel, the embarrassment of having to take their pet sitter with them to the bank, the stress of having to unexpectedly and expediently look for and secure new accommodation, and the lack of access to their possessions. The Landlord argued that the Tenant should not be entitled to aggravated damages, as they caused the lockout by taking unauthorized vacation from their live-in nanny position, despite having been advised by the Landlord of the consequences of doing so, including the loss of their job and the rental unit associated with it.

In support of their arguments, the Tenant provided several photographs of items allegedly owned by the Tenant and damaged by the Landlord, including photographs of a table and mattress, as well as photographs showing comparable items, such as electronics, allegedly damaged or lost by the Landlord, and their current price, as well as written submissions, copies of correspondence sent to the Landlord by the Tenant's Advocate, a monetary order worksheet, receipts for purchases, February rent and hotel stays, and copies of text messages exchanged between the Tenant and the Landlord. The Landlord submitted written submissions, copies of text messages between themselves and the Tenant, and a Narrative Text Hardcopy from the police with regards to the Tenant's complaint on January 29, 2019, about the lockout.

Analysis

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. As this is the Tenant's Application, I therefore find that the Tenant bears the burden of proof.

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 and that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Policy Guideline #16 also sets out a 4 part test

for determining whether compensation for damage is due, as follows. The arbitrator must be satisfied on a balance of probabilities that:

- A party to the tenancy agreement has failed to comply with the *Act*, regulations or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss has proven 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.

As previously stated, I found in the Interim Decision dated June 15, 2021, that a tenancy to which the *Act* applies existed between the parties. 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. Based on the testimony of the parties at the hearing, I am satisfied that the Landlord changed the locks to the rental unit and the garage access code without proving the Tenant with a replacement key, the new garage access code, or another means of access to the rental unit. As a result, I am satisfied that the Landlord breached section 31 (1) of the *Act*. Further to this, I am also satisfied that the Landlord breached the *Act* when they ended the tenancy due to the end of the employment relationship without complying with the requirements set out under section 48 of the *Act.* Having made these findings, I will now turn my mind to the Tenants claims for monetary loss and aggravated damages.

Although the Tenant and their Advocate submitted a Monetary Order Worksheet, a written account of possessions and their values, and several photographs of a table and mattress, overall, there was no evidence from the Tenant establishing ownership of the majority of the items claimed to have been damaged or lost by the Landlord, with the exception of a photograph of a mattress and table. Further to this, the photographs submitted of the mattress and table are not date stamped, and therefore I am not satisfied that they establish either ownership of the items at the time of the tenancy, or their damage by the Landlord. As a result, I dismiss the following monetary claims by the Tenant without leave to reapply:

- $699.00 for missing electronics;
- $1,450.00 for missing jewelry;
- $1,575.00 for damaged items;
- $185.00 for missing property; and
- $315.00 for missing incidental items.

Although the Tenant did not submit proof establishing the value of the food they allege was left behind in the fridge and freezer of the rental unit, I am satisfied that the Tenant was locked out of the rental unit but the Landlord, contrary to the requirements of the *Act*. Based on common sense and ordinary human experience, I am also satisfied on a balance of probabilities that the Tenant would reasonably have had some amount of food in the rental unit at the time they left for vacation. Although I am satisfied that the Tenant therefore suffered some loss of these items as a result of the unlawful lock-out, the Tenant has failed to satisfy me of the $250.00 valuation given for these items. As a result, I award the Tenant only the nominal amount of $50.00 for this loss, pursuant to Policy Guideline #16.

As stated above, I am satisfied that the Landlord breached sections 38 (1) and 48 of the *Act* when they locked the Tenant out of the rental unit and ended the tenancy in a manner other than that permitted by the *Act*. Based on the testimony of the Tenant and their Advocate and several hotel invoices, I am satisfied that the Tenant incurred hotel costs of $768.25 between January 29, 2021, and February 6, 2021, as a result of the lockout and the unlawful way in which the Landlord ended the tenancy. Based on the testimony of the Tenant and their Advocate, as well as the hotel invoices, I am also satisfied that the Tenant mitigated their losses by moving to a more economical hotel after the first night. As a result, and pursuant to section 7 of the *Act* and Policy Guideline #16, I grant the Tenant's claim for reimbursement of $768.25 in hotel costs.

Although the Tenant and their Advocate stated that the Tenant secured a new rental unit for February, at a cost of $800.00, no tenancy agreement was submitted for my review and consideration to corroborate this testimony. Further to this, although the Tenant submitted a receipt allegedly showing $800.00 in February rent, plus a $400.00 security deposit, were paid on February 1, 2019, the rent receipt does not contain the name or signature of the issuer, is from a generic receipt book, and contains no information about the rental unit to which it relates, which I find concerning. The date of payment is also incongruous with the Tenant's testimony with regards to when they secured the rental unit, and their move-in date of February 5, 2021. As a result, I find that the Tenant has failed to satisfy me, on a balance of probabilities, that they secured a new tenancy for February 2019, at a cost of $800.00, and I therefore dismiss their claim for reimbursement of this amount without leave to reapply.

The Tenant also sought reimbursement of $225.82 for food and necessary incidental items purchased as a result of being locked out of the rental unit. Although the Landlord stated at the hearing that they had been accommodating and that it was the Tenant who had made little effort to arrange for entry to the rental unit and the retrieval of their

possessions, I disagree. A text from the Landlord to the Tenant on January 30, 2021, indicates that the Tenant was required to have all of their belongings out of the rental unit by February 4, 2019, and that the Landlord would grant them only a one time four hour window in order to do so. Another text message chain shows that the Tenant attempted to arrange for access to the rental unit, and was denied by the Landlord. As a result, I am satisfied that the Tenant was required to make the above noted purchases, for which receipts were provided for my review and consideration, as a result of the unlawful lock out and the Landlord's failure to provide the Tenant with proper access to their belongings, including food and personal possessions. I am also satisfied based on the Tenant's testimony and the text messages, that the Tenant mitigated their losses by attempting to gain access to the rental unit and their possessions from the Landlord during the unlawful lockout, and that they purchased only reasonable and necessary food and incidental items at a reasonable cost. As a result, and pursuant to section 7 of the *Act*, I grant the Tenant's claim for $225.82 in food and incidental expenses.

Finally, the Tenant sought $3,000.00 in aggravated damages. Policy Guideline #16 states that "Aggravated damages" are for intangible damage or loss and may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services and in situations where significant damage or loss has been caused either deliberately or through negligence. Although I appreciate the Landlord's position that they did not believe that the *Act* applied, it is clear from the Narrative Text Hardcopy submitted by the Landlord that the parties were advised of the *Act* by the police in relation to the lockout, on January 29, 2021. Despite that fact, there is no evidence before me that the Landlord made any attempts to review the *Act* or contact the Branch in order to ascertain whether their belief that the *Act* did not apply was correct, something the Tenant's Advocate argued constitutes negligence. I agree. Further to this, I find it particularly egregious that the Landlord not only locked the Tenant out of the rental unit contrary to section 38 (1) of the *Act*, forcing them to arrive home from vacation with no access to the rental unit or their personal possessions, but that they also failed to comply with the requirements set out under section 48 of the *Act* for ending the tenancy and I am satisfied that doing so caused the Tenant significant stress and emotional damage or loss, amounting to not less than $3,000.00. As a result, and pursuant to section 7 of the *Act*, I grant the Tenant's monetary claim for $3,000.00 in aggravated damages.

Based on the above, and pursuant to section 67 of the *Act*, I therefore grant the Tenant a Monetary Order in the amount of $4,044.07 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 **$4,044.07**. The Tenant is provided with this Order in the above terms, and should the Landlord fail to comply with this Order, this Order may be served on the Landlord and filed in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

I believe that this decision has been rendered in compliance with the timelines set forth in section 77 (1) (d) of the *Act* and section 25 of the *Interpretation Act*. In the event that this is not the case, I note that section 77 (2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30 day period in subsection (1) (d).

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Dated: August 8, 2021

Residential Tenancy Branch