



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, MNDCT, FFT

Introduction

On June 19, 2021, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking an order for the Landlord to comply with the Act and to suspend or restrict the Landlords right of entry into the unit. On June 29, 2021 the Tenants amended the application to include a claim for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Tenant and the Landlord attended the hearing. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They provided affirmed oral testimony and were given an opportunity to make submissions during the hearing.

The Tenants served the Landlord with a copy of their documentary evidence. The Landlord did not provide the RTB or serve the Tenants with any documentary evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision. The parties were informed that recording the hearing is not permitted.

Preliminary and Procedural Matters

The Tenants moved out of the rental unit on June 17, 2021. Since the tenancy has ended the hearing proceeded only on the Tenants’ claim for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement and for the return of a security deposit.

The Landlord stated that he did not receive the Tenants' documentary evidence with respect to their claims.

The Tenants testified that they served the Landlord using registered mail sent to the Landlord's home on September 22, 2021.

Near the end of the hearing the Landlord stated that the digital documents evidence he received from the Tenants is not filled out correctly, so the Tenants' evidence should not be accepted. The Landlord did not elaborate on what was improperly completed.

Despite the Landlords affirmed testimony that he did not receive the Tenants' documentary evidence, by the Landlord's own testimony it is clear that he has received the evidence. I find that the Tenants served their evidence to the Landlord in accordance with sections 89 and 90 of the Act. The Tenants documentary evidence was given full weight.

Issue to be Decided

- Are the Tenants entitled to money owed or compensation for damage or loss?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on November 1, 2020 as a one-year fixed term tenancy to continue until November 30, 2021. Rent in the amount of \$2,200.00 was due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,000.00 to the Landlord. The tenancy ended by July 1, 2021.

The Tenants provided a monetary order worksheet indicating they are seeking compensation for the following items:

| | |
|------------------|-------------|
| 11 Days of Rent | \$806.00 |
| Moving Costs | \$997.50 |
| Security Deposit | \$2,000.00 |
| Wages | \$1000.00 |
| Camera | \$49.99 |
| Groceries | \$150.00 |
| Necklace | \$250.00 |
| Harassment | \$5000.00 |
| Filing fee | \$100.00 |
| total | \$10,354.15 |

11 Days of Rent

The Tenants testified that they reached an agreement with the Landlord permitting them to break the fixed term lease and move out of the rental unit for the end of June 2021. The Tenants testified that they had paid the June 2021 rent.

The Tenants testified that they started moving on Friday, June 18, 2021 and had moved most of their stuff out, when they returned to the unit to find they were locked out and all of their remaining possessions were placed on the lawn in bags and boxes. The Tenants testified that they received a text message from the Landlord stating that he had changed the lock and removed their items. The Tenants provided a copy of the text message.

The Tenants testified that they had no further access to use the rental unit including an opportunity to finish cleaning the unit.

The Tenants testified that the only door to access their rental unit was through a sliding glass door that led into an entry way containing an inner door into the rental unit. The Tenants testified that they found the sliding glass door was locked and they could not gain entry into the entry way. The Tenants testified that this door is the only entrance into the unit. The Tenants testified that they saw the Landlord in the window of his home, and they knocked on his door and attempted to call him on the phone; however, the Landlord ignored them. The Tenants submitted that the Landlord knew they had not finished moving because they had informed him on Thursday June 17, 2021 that they would be cleaning the unit over the weekend.

The Tenants testified that they paid the rent for June 2021 in full and they are seeking to recover \$806.00 which is pro-rated rent for 11 days that were remaining for June 2021.

In reply the Landlord stated that the locks were never changed. The Landlord stated that there is no key lock on the patio door, but there is a thumb lock slider that probably slipped down. The Landlord stated that he entered the Tenants rental unit and turned off the heat, closed the windows, and turned off the lights. The Landlord stated that he is allowed to enter a rental unit when people are leaving.

The Landlord testified that he removed the Tenants' items from the rental unit because they told him they were moving out.

Moving Costs

The Tenants are seeking to be compensated by the Landlord for moving costs. The Tenants stated that it was uncomfortable to live there. The Tenants testified that they asked the Landlord if they could break the lease and move out and the Landlord agreed.

In reply, the Landlord testified that the Tenants moved out by their own choice. He testified that he never forced them to move out. He testified that he was happy to let them break the lease and leave because of their high use of hydro.

Security Deposit

The Tenants are seeking \$2,000.00 which is double the amount of the security deposit. The Tenants testified that they provided the Landlord with their forwarding address in writing using registered mail sent on June 28, 2021, which the Landlord received on June 29, 2021. The Tenants testified that the Landlord sent them a text message acknowledging that he received the mail. The Tenants provided a copy of a Canada Post tracking slip indicating the mail was delivered to the mailbox on June 29, 2021.

The Tenants testified that the Landlord has not returned any amount of the security deposit to them and there was no written agreement permitting the Landlord to keep any amount of the security deposit.

In reply the Landlord testified that he received the registered mail with the Tenants forwarding address; however, he did not know the date he received it. The Landlord confirmed that he has not returned any amount of the security deposit.

The Landlord applied for dispute resolution on July 28, 2021 and included a claim against the security deposit. The hearing for the Landlord's application is set for February 10, 2022.

Wages

The Tenants are seeking compensation for a loss of wages for the time it took them to prepare for the hearing.

The Tenants were informed that compensation may be awarded for a breach of the Act; however, the preparation time for a hearing is not compensable against the Landlord. The Tenants' claim was dismissed.

Camera

The Tenants are seeking compensation for the cost of a camera. The Tenants testified that the Landlord removed their possessions from their home and left the possessions outside. The Tenants testified that a small surveillance camera has a damaged lens. The Tenant stated the camera works but is blurry. The Tenant testified that the camera is approximately four months old and cost \$59.99. The Tenants did not provide a copy of receipt showing the cost to purchase the camera or an advertisement showing the cost to replace the camera. The Tenants provided a photograph of the cameras.

In reply, the Landlord testified that there were two cameras that he left outside on top of a cardboard box and that they were not damaged.

Groceries

The Tenants are seeking \$150.00 for the cost to replace food items that the Landlord removed from their refrigerator and left outside in the yard. The Tenants testified that the Landlord placed the food items in bag with a toilet plunger and toilet scrubber, so the Tenants disposed of the food items. The Tenants' monetary claim is an estimation of the cost to replace the items that were thrown out. The Tenants did not provide any receipt for the purchase of items.

In reply, the Landlord testified that the refrigerator was 99% empty with only a few condiments and cheese inside. The Landlord stated that he removed them and placed them in a bag and left them outside.

Necklace

The Tenant testified that a necklace received as a gift from her mother that has sentimental value was removed from the rental unit by the Landlord and found in a bag outside and is damaged. The Tenant testified that she does not know the value of the necklace. The Tenant did not have the necklace clasp chain repaired.

The Landlord testified that he has no recollection of seeing a necklace and questioned why the Tenant would leave the necklace in the rental unit after most everything had been removed if it had sentimental value to her.

Harassment

The Tenants are seeking compensation of \$5,000.00 for what they describe as a loss of quiet enjoyment in the tenancy due to verbal and emotional harassment and noise disturbances from the Landlord.

V.R. testified that the Landlord called her an idiot and other rude names. The Tenants provided a transcript of a phone call that took place between the Tenant G.H. and the Landlord on May 1, 2021.

The Tenants stated utilities were included in the rent; however, the Landlord kept asking them to pay more for hydro utility costs and did not give generous access to use the garbage cans, so they had to make trips to the dump.

The Tenants stated that there were noise disturbances caused by the Landlord working outside on vehicles with power tools. The Tenants stated that the noise generally occurred between 8 am to 3 pm two to four times each week.

The Tenants testified that they texted the Landlord about the noise but received no response.

In reply the Landlord stated that he used a leaf blower on occasion to clean up the yard area and also has an area covered by a tarp for working on his vehicle. The Landlord stated that he builds flower boxes and other items.

In response to the allegation about verbal abuse, the Landlord stated that he very rarely spoke to V.R. because he found her to be rude. He stated that he spoke to G.H. and he acknowledged that he told him he is glad that their marriage is cancelled. The Landlord acknowledged saying things to G.H. but points out that he did not say the things directly to V.R. The Landlord stated that V.R. would complain about everything.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 7 of the Act provides,

if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the affirmed testimony of the Landlord and Tenants, the Tenants' documentary evidence, and on a balance of probabilities, I make the following findings:

11 Days of Rent

I find that the Tenants paid the rent for June 2021 had the right to live in the unit for the entire month of June 2021. I accept the Landlords testimony that he entered the rental unit and turned off the heat, closed the windows, turned off the lights, and removed the Tenants items from the rental unit.

I accept the Tenants testimony that they tried to gain access to the rental unit and found the door to be locked and that they observed the Landlord on the property and attempted to contact him to regain access to the unit.

I find that the Tenants, through no fault of their own, were unable to access and use the rental unit. I find that the Tenants are entitled to recover 11 days of pro-rated rent from the Landlord.

I award the Tenants \$806.66.

Moving Costs

I find that the Tenants asked to break the lease and move out and the Landlord agreed. The tenancy ended by the Tenants choice and therefore any moving costs are not recoverable against the Landlord.

The Tenants claim for \$997.50 is dismissed.

Security Deposit

I accept the Tenants testimony that they sent the Landlord their forwarding address on June 29, 2021 using registered mail. I accept the Landlords testimony that he received the forwarding address and that he cannot recall the date. Pursuant to section 90 of the Act, I find that the Landlord is deemed to have received the Tenants forwarding address on July 4, 2021, five days after it was mailed.

I find that the Landlord did not repay the security deposit to the Tenants within 15 days of receiving their forwarding address and there was no written agreement permitting the Landlord to keep the deposit.

The Landlord applied for dispute resolution on July 28, 2021 and claimed against the deposit. I find that the Landlord did not apply against the security deposit within 15 days of when he received the Tenants forwarding address.

The Landlords claim against the security deposit is late; therefore, the matter proceeded based on the Tenants application before me.

I find that the Landlord breached section 38 of the Act by failing to return or make a claim against the security deposit within 15 days of receiving the Tenants forwarding address. The Landlord must pay the Tennst double the amount of the security deposit.

I award the Tenants the amount of \$2,000.00.

Camera

I find that the Landlord breached the Act by removing the Tenants' possessions from the rental unit and placing them on the lawn. The Landlord did not have a right under the Act to enter the rental unit and remove the Tenants' possessions. The Landlord is responsible for any claims that are proven as a result of this breach.

The Tenant stated the camera was four months old and is now blurry, but they did not provide a receipt for the purchase of the camera or a receipt or quote for the replacement cost of the camera. The Tenants failed to prove the value of their loss. In this situation, where there is a breach but no proven value of loss, I find that a nominal damages award is appropriate. I award the Tenants \$10.00 for the damaged camera.

Groceries

I find that the Landlord breached the Act by removing the Tenants possessions from the rental unit and placing them on the lawn. The Landlord did not have a right under the Act to enter the rental unit and remove the Tenants' possessions.

The Tenants failed to prove the value of their loss. In this situation, where there is a breach but no proven value of loss, I find that a nominal damages award is appropriate. I award the Tenants \$20.00 for the spoiled food.

Necklace

I find that the Tenant did not establish a loss or value of loss for a damaged necklace. There is insufficient evidence from the Tenants to justify a \$250.00 claim. The Tenants did not prove the value of the necklace; have the necklace repaired or provide a quote for the cost of repair.

The Tenants' claim for compensation of \$250.00 is dismissed without leave to reapply.

Harassment

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

The Tenants and Landlord both lived on the residential property. It is reasonable to expect that they could each be on the common property using the property or maintaining the property. It is reasonable that the Tenants should expect to hear noise occasionally during the day. I find that noise from using the property or maintaining it or working on a vehicle two to four times a week during the day is not unreasonable noise.

With respect to the allegation of verbal abuse, I have reviewed the transcripts provided by the Tenants. The Landlord and male Tenant were engaged in a relaxed and informal conversation which progressed into a conversation where the Landlord gave his opinion on women and marriage in general. The Landlord stated that he is not saying anything about V.R.

While I accept the Landlord's, language was very rude and offensive, the Landlord was expressing his opinion directly to the male Tenant. I note that at no point during the conversation did the male Tenant verbally object or take offence to anything the Landlord was saying. The Tenant stated "yeah" in response to the Landlord and thanked the Landlord at the end of the conversation.

I find that noise from using the property or maintaining it and the conversations between the Landlord and Tenant do not amount to a breach of quiet enjoyment where compensation should be paid to the Tenants.

The Tenants claim for \$5,000.00 for a loss of quiet enjoyment is dismissed.

Filing fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

The Tenants have established a monetary award of \$2,936.00. I grant the Tenants a monetary order in the amount of \$2,936.00. This monetary 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 Tenants were successful with some of their monetary claims against the Landlord.

I grant the Tenants a monetary order in the amount of \$2,936.00.

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: November 10, 2021

Residential Tenancy Branch