



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCL-S, FFL
 MNDCT, MNSD, RPP, FFT

Introduction

This hearing dealt with adjourned cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on August 15, 2022. The Landlord applied for a monetary order for unpaid rent or utilities, for a monetary order for losses, permission to retain the security deposit and an order to recover the cost of filing the application.

The Tenant’s application for Dispute Resolution was made on April 20, 2023. The Tenant applied for a monetary order for compensation for losses or other money owed, for the recovery of their security deposit and pet damage deposit, for the of recovery their personal property, and to recover the filing fee for their application.

An agent for the Landlord (the “Landlord”), one of the Tenants and the Tenant’s legal counsel (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for losses under the *Act*?
- Is the Landlord entitled to retain the security deposit and or pet damage deposit in partial satisfaction of their claim?
- Is the Landlord entitled to recover the cost of their application filing fee?
- Is the Tenant entitled to a monetary order for compensation for losses or other money owed?
- Is the Tenant entitled to a monetary order for the recovery of their security deposit and pet damage deposit?
- Is the Tenant entitled to an order for the recovery of their personal property?
- Is the Tenant entitled to the return of their application filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed that the tenancy began on January 21, 2022, as a one-year and 10-day fixed-term tenancy that would have rolled into a month-to-month at the end of the initial fixed term. Rent was set in the amount of \$4,495.00 and was to be paid by the first day of each month. The Landlord collected a security deposit of \$2,247.50 and a pet damage deposit of \$1,123.75 at the outset of this tenancy. Both the Landlord and the Tenant submitted a copy of the Tenancy agreement into documentary evidence.

The Landlord submitted that they received an email from the Tenant on June 11, 2022, advising them that the Tenant would be ending the tenancy as of July 10, 2022. The Landlord testified that they advised the Tenant that they could not end the tenancy mid-month. The Landlord submitted that the Tenant moved out of the rental unit as of July 31, 2022, and that the Tenant paid the full rent for the month of July 2022. The Landlord submitted a copy of the email into documentary evidence.

The Landlord submitted that they took immediate steps to find a new renter for the rental unit but that they were unable to secure a new renter until September 7, 2023. The Landlord testified that when they originally advertised the rental unit, at the rent rate of \$4,495.00, they received little to no interest from prospective new renters. The Landlord testified that they were forced to advertise the rental unit at the lower rate of

\$3,595.00 for rent in order to get interest. The Landlord submitted six documents to show their attempts to re-rent the rental unit, and a copy of the new renter's tenancy agreement into documentary evidence.

The Landlord submitted that they are claiming for the loss of the full rent for August 2022, and the difference between what the Landlord would have received in rent from the Tenants under their tenancy and what the Landlord was able to re-rent the rental property for under the new renter's agreement, for the balance of the term of this tenancy, consisting of \$900.00 a month between September 1, 2022, to January 31, 2023.

The Tenant submitted that they should not be responsible for the Landlord's requested amounts as this tenancy was frustrated. The Tenant testified that on April 7, 2022, there was a swarm of bees on their rental property, that stung their dog, who had a severe bee allergy that could result in death. The Tenant testified that after the bee swarm, they discovered that their rental property was directly neighbouring a bee farm, which had placed 40 beehives right along the fence that separated their two properties. The Tenant submitted six videos into documentary evidence.

The Tenant submitted that they advised the Landlord right away about the problem but that the Landlord failed to do anything about the problem which led to further interactions with large swarms of bees and a total of four bee stings to their dog. The Tenant testified that each time the dog was stung they had to take them to the veterinarian for treatment due to the allergy.

The Tenant submitted that they attempted to work with the Landlord to resolve the bee problem but that after weeks of no action by the Landlord and no use of their backyard due to the bees, they decided that they had no choice but to end this tenancy. The Tenant claimed that due to the dangerous situation caused by the beehives and the bee farm in general, to their family pet, this tenancy was frustrated.

The Landlord and Tenant agreed that neither the Landlord nor the Tenant knew that the neighbouring property to the rental unit was a bee farm when this tenancy began.

The Landlord testified that they took immediate action to address the Tenant's complaint about the bee farm and in particular the beehives on the property line. The Landlord submitted that they contacted the neighbour to ask them to move the hives, and had their lawyer send them a letter. The Landlord also testified that they also looked into possible physical barriers that could be installed and checked with the

municipal authority to confirm if it was legal to have a bee farm so close to a residential area.

The Landlord testified that there was no restriction on bee farms in the area and that there was no physical barrier that could be used to keep the bees away from the rental property but that the farm did agree to move the beehives away from the property line.

The Landlord submitted that the bees created a nuisance to the Tenant and that this situation did not meet the test for a frustrated contract. Additionally, the Landlord submitted that the Tenant has not provided any evidence to substantiate their claim that their dog has a severe allergy to bees and that the Tenant continued to live in the rental unit for months after the incident of April 7, 2022. And discovering the beehives. The Landlord submitted if the presence of the bees was sufficient to frustrate the contract the Tenant would have moved right away.

The Tenant submitted that they are seeking a full refund for rent paid from April 2022-July 2022, in the amount of \$17,980, as the tenancy was no longer valid because they were not able to use and enjoy their property as a result of the Landlords failure to resolve the bee issue. The Tenants claimed that they were locked inside their home as it was too dangerous of an environment to be outside.

During these proceedings, the parties reached an agreement for \$500.00 in compensation due to the Landlord's employee disposing of the Tenant's personal property, including astroturf, flowerpots and planters.

Analysis

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

I accept the agreed-upon testimony of both parties that they entered into a fix-term tenancy agreement that started on January 21, 2022, and was contracted to end one year and 10 days later, on January 31, 2023. I also accept the agreed-upon testimony of both parties that this tenancy ended on August 1, 2022, earlier than the contracted date for this rental unit.

The Tenant has submitted that the tenancy agreement signed between these parties was frustrated due to the presence of a bee farm that neighboured the rental property.

The Landlord has submitted that the presence of a bee farm amounted to nothing more than a nascence and was insufficient to frustrate the tenancy agreement.

The doctrine of frustration is a contract law doctrine that relieves the liability under a contractual agreement in the event of a breach of contract, where a party to the agreement is prevented from, or unable to, perform their obligations under the agreement, due to some event which occurs, which was outside of their sphere of control. In such circumstances, the law deems it unfair to compel the injured party to comply with the terms of the agreement, and the law relieves this person from their obligations under the contract.

The Residential Tenancy Policy Guideline #34 Frustration states the following:

“A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.”

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms. A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.

The *Frustrated Contract Act* deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15th day of the month, under the Frustrated Contracts Act, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.”

For a claim pursuant to the *Frustrated Contract Act* to be successful, the claimant must show that a circumstance arose that made the performance of the contract impossible. The classic example of this in relation to a residential tenancy is when there has been a fire in a rental unit, destroying the rental unit, resulting in the frustration of the tenancy agreement as there is no longer a rental unit to occupy. In such cases, the tenancy would immediately end, with no requirement for a notice to end the tenancy or requirement to pay future rent. In the case before me, the Tenant claimed that their tenancy was frustrated due to the presence of bees on the property, that were from the bee farm next door to the rental unit.

In this case, the Tenant has claimed that the presence of the bees, often in large numbers, and a bee allergy of their pet created the conditions that made the performance of this tenancy contract impossible.

I have reviewed the testimony provided by these parties, and find that on April 7, 2022, the Tenant's dog suffered a bee sting from a swarm of bees that had come onto the rental property from several beehives that had been placed beside a fence between a neighbouring farm and the rental property. I also accept the testimony of the Tenant that due to the presence of the beehives, so close to their property, and the behaviour and number of bees housed in the hives, they were uncomfortable using their backyard. I acknowledged that the presence of bees and the proximity of beehives would make some individuals uncomfortable and would have created a hardship for this Tenant. However, it is not the creation of a hardship alone that calls the principle of frustration into play. It must be substantially more than hardship for a situation to meet the test to deem a contract frustrated. What is required is that the situation must have made it impossible for the contract to be completed.

I note that in the Tenant's own submissions, they agree that they continued to reside in the rental unit for several months after they had discovered that they were living beside a bee farm and that beehives had been placed near the rental property. I also noted that the Tenant did not present any evidence during the hearing of their dog's allergy to bees or of the treatment of bee stings. However, I have completed a full review of the Tenant's documentary evidence and I find that there is no evidence before me in these proceedings, to substantiate the Tenant's claim of a severe allergy to bee stings.

As the Tenant was able to live in the rental unit for several months after discovering the beehives, and as there is no evidence to support a claim of a medical need, I find that, by the Tenant's own actions, the rental unit was in fact still habitable and therefore not frustrated, as it was possible for the contract to be completed.

Although it would have been a hardship for the Tenant and their family to live in such close proximity to beehives, living there was not made impossible by the presence of the bee, the beehives of the bee farm. Therefore, I find that this tenancy agreement was not frustrated due to the presence of the bees but that the presence of the bees and the number of bees associated with the beehives did result in a loss of the quiet enjoyment of the rental property.

Before me I also have compensation claims from both the Landlord and the Tenant, I will address each claim individually, starting with the Landlord.

The Landlord has claimed for compensation due to lost rental income caused by the Tenant's actions of ending their tenancy earlier than the contracted date in the tenancy agreement. The Landlord is requesting the recovery of the lost rental income between August 2022, to January 2023.

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

Tenant's notice

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I accept the agreed-upon testimony of these parties that the Tenant ended the tenancy early when they moved out of the rental unit at the end of July 2022. I find that the Tenant breached section 45 of the *Act* when they ended this tenancy before the contract to date in the tenancy agreement.

Awards for compensation due to damage or losses are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden of proving their claim. The Residential Tenancy Policy

Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

I have reviewed the submission of the Landlord, and I find that the Tenant's breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord, the value of that loss and that the Landlord has provided sufficient evidence to prove that they took immediate action to minimize their losses, by securing a new renter to take over the rental unit as of September 7, 2022, at the monthly rental rate of \$3595.00 for this rental unit.

Therefore, I find that the Landlord has provided an entitlement to the recovery of the loss of rental income between August 1, 2022, to September 6, 2022, the period in which the rental unit was unoccupied, in the amount of **\$5,394.04**, consisting of \$4,495.00 in rent for August 2022, and \$899.04 in rent for September 1-6, 2022.

Additionally, compensation is to put the claimant in the same position as if the breach had not happened. To provide further clarity on this point the Residential Tenancy Guideline #3 Claims for Rent and Damages for Loss of Rent states the following:

“Compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. It may also take into account the difference between what the landlord would have received from the defaulting tenant for

rent and what they were able to re-rent the premises for during the balance of the term of the tenancy.

For example, a tenant has entered into a tenancy agreement for a fixed term of 12 months with rent of \$1000 per month. The tenant leaves the premises in the middle of the second month, after not paying rent for that month and having received a notice to end tenancy for non-payment of rent. The landlord re-rents the premises from the first of the next month but only at \$950 per month. The landlord would be able to recover the unpaid rent for the second month and the \$50 difference over the remaining 10 months of the original term.”

I also find that the Landlord has established an entitlement to the recovery of their loss of rental income, due to the loss of \$900.00 per month in rental income under the new tenancy agreement. Therefore, I award the Landlord the recovery of their lost rental income in the amount of **\$4,319.80**, consisting of \$719.80 in lost rent between September 7-30, 2022, and \$900.00 in rent for October 2022, and \$900.00 in rent for November 2022, and \$900.00 in rent for December 2022, and \$900.00 in rent for January 2023.

I grant permission to the Landlord to retain the security deposit and pet damage deposit they are holding for this tenancy in partial satisfaction of this award.

Overall, for the Landlord’s claim, I award the Landlord \$6,342.59, consisting of \$5,394.04 in lost rental income between August 1 to September 6, 2022, \$4,319.80 in lost rental income between September 7, 2022, to January 31, 2023, less the security deposit of \$2,247.50 and the pet damage deposit of \$1,123.75, that they are holding for this tenancy.

As for the Tenant’s claims, first, the Tenant has claimed for the recovery of all their rent paid between April 2022 to July 2022, in the amount of \$17,980.00, due to the loss of the use of the rental property. Section 28 of the *Act* establishes a tenant’s right to quiet enjoyment and reads as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
(d) use of common areas for reasonable and lawful purposes, free from significant interference.

As I have previously determined the Tenant did suffer a loss of quiet enjoyment due to the presence of a large number of bees on the rental property, I find that there had been a breach of section 28 of the *Act*, and that the Tenant did suffer a loss of quiet enjoyment between April 2022 to July 2022, a period of four months.

In determining the amount of compensation to be awarded to the tenant, due to a breach of section 28 of the *Act*, I must consider the Residential Tenancy Policy Guideline #6 Entitlement to Quiet Enjoyment, which states the following:

Compensation for Damage or Loss

“In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations”

I find that the loss of the undisturbed use of the backyard for this rental property was a deprivation of the Tenants’ right to the quiet enjoyment of the rental property. Due to the conditions caused by the presence of a large number of bees on the property.

Consequently, I find it appropriate to award the Tenant the return of 1/3 of all the rent paid between April to July 2022. Accordingly, I award the Tenant the amount of **\$5,993.32** for the loss of quiet enjoyment.

I acknowledged that the Landlord did not place the beehives near the rental property however, I find that it is the Landlord who has the legal relationship with the neighbouring property owner, and it is the Landlord who has the legal obligation to ensure that their Tenants have quiet enjoyment of the rental unit.

The Landlord may have a claim against their neighbour however, I do not have jurisdiction over a possible dispute between the neighbours.

The Tenant has also claimed for the recovery of personal property and for \$1,000.00 in compensation for the loss of personal property, including artificial turf, flowerpots, and planters. The parties came to an agreement during the proceedings that the personal property had been disposed of and could not be returned to the Tenant and that the Landlord would pay the Tenant \$500.00 for that lost property, in full satisfaction, of this part of the Tenant's claim. Accordingly, I award the Tenant the agreed amount of **\$500.00**.

Overall, for the Tenant's claim, I award the Tenant \$6,493.32, consisting of \$5,993.32 in lost quiet enjoyment and \$500.00 in compensation for lost personal property.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As both the Landlord and the Tenant have been partially successful in their application, I decline to award either party the recovery of their respective filing fees paid for these proceedings.

As a result of these proceedings, I grant the Tenant a Monetary order in the amount of \$150.73, consisting the of overall award to the Tenant of \$6,493.32, less the overall award to the Landlord of \$6,342.59.

Conclusion

I find for the Tenant under section 67 of the Act. I grant the Tenant a **Monetary Order** in the amount of **\$150.73**. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: August 23, 2023

Residential Tenancy Branch