



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to compensation for the loss of quiet enjoyment of his rental unit as a result of fire doors being left open; whether the Tenant is entitled to compensation for the loss of quiet enjoyment of his rental unit as a result of threats made by the Landlord; whether the Tenant is entitled to compensation because the Landlord did not have all of the permits necessary for ending the tenancy pursuant to section 49 of the *Residential Tenancy Act (Act)* and whether the Tenant is entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 01, 2004 and that the Tenant vacated the rental unit on May 03, 2007. The Tenant filed this Application for Dispute Resolution on April 30, 2009.

The Landlord and the Tenant agree that the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 47 of the *Act*, on February 17, 2007. The Notice declared that the Tenant must vacate the rental unit by April 30, 2007. The Notice stated that the landlord has all the necessary permits and approvals required by law to demolish the rental unit or to repair the rental unit in a manner that requires the rental unit to be vacant. The Tenant stated that he did not dispute the Notice to End Tenancy and that he vacated the rental unit on May 03, 2007.

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The Tenant is now claiming compensation because he alleges that the Landlord did not have the necessary permits to renovate the rental unit. The Tenant submitted no evidence to corroborate his suspicion that the Landlord did not have the necessary permits.

The Landlord stated that he renovated eight rental units in the residential complex, including the rental unit that is the subject of this dispute. The Tenant submitted no evidence to refute the Landlord's statement.

The Tenant is also claiming financial compensation because he alleges the Landlord breached his right to the quiet enjoyment of his rental unit. The Tenant stated his right to quiet enjoyment was breached, in part, because the fire doors in the residential complex were frequently left open, which caused him to fear for his personal safety. He stated that in January, February, and March of 2007 he noticed that the fire doors were being propped open on a regular basis. He stated that he would close the doors only to find them propped open again a short time later.

The Landlord and the Tenant agree that the Tenant sent the Landlord an email sometime during the latter portion of January, in which the Tenant expressed concern about the fire doors being left open. The parties agreed that they subsequently had a telephone conversation in which the Landlord advised the Tenant that the fire doors were being left open during the day because the Landlord was painting and renovating the residential complex and that he had authority from the fire department to keep the doors open providing the workmen were in the residential complex. The parties further agreed that during the telephone conversation the Tenant advised the Landlord that the fire doors were being left open during the evening, at which point the Landlord suggested they were being left open by other occupants because he closes them at the end of the day and that he sometimes has to close them again when he finds them open in the evening when he does his "rounds".

The Tenant acknowledged that he spoke with someone from the fire department or the municipality and he was advised that it was acceptable to leave fire doors open during construction while workers were in the vicinity.

The Tenant also contends that his right to the quiet enjoyment of his rental unit was breached when the Landlord threatened to shut off the power in the rental unit and to begin renovating walls in the rental unit before the Tenant vacated the rental unit.

The Landlord and the Tenant agree that the Tenant did not vacate the rental unit, as required, on April 30, 2007. The parties agree that they had a conversation on April 30, 2007 in which the Tenant advised the Landlord that he was intending to vacate the rental unit in a few days. The Landlord stated that he was upset with the Tenant and

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that he threatened to shut off the power to the rental unit and to begin the renovations he had planned, although both parties acknowledge that the Landlord did not act on those threats.

Analysis

Based on the undisputed evidence provided by the parties, I find that the Landlord served the Tenant with a Notice to End Tenancy for Landlord's Use of Property and that the tenancy ended on that basis of that Notice on April 30, 2007, although the Tenant remained in the rental unit until May 03, 2007.

There is a general legal principle that requires the places the burden of proving a fact on the person who is claiming compensation for damages, not on the respondent. McGregor, H. writes in *McGregor on Damages*, 15th ed., Sweet & Maxwell Limited, London, 1988, at p.1134

The plaintiff has the burden of proving both the fact and the amount of damage before he can recover substantial damages. This follows from the general rule that the burden of proving a fact is upon him who alleges it and not upon him who denies it, so that where a given allegation forms an essential part of a person's case the proof of such allegation falls on him.

In these circumstances, the burden of proof rests with the Tenant.

In regards to the Tenant's claim for compensation for being required to vacate the rental unit pursuant to being served with a Two Month Notice to End Tenancy for Landlord's Use of Property, I find that the Tenant has submitted insufficient evidence to show that the Landlord needed permits to renovate the rental unit and that he did not have the requisite permits. As the Tenant has failed to establish that the Landlord did not have the necessary permits to renovate the rental unit, I dismiss his application for compensation for the manner in which this tenancy was ended.

I further find that the Tenant submitted no evidence to show that the Landlord did not take steps to renovate the rental unit within a reasonable period after the effective date of the Notice to End Tenancy. I therefore find that the Tenant has not established that he is entitled to compensation pursuant to section 51(2) of the *Act*.

Every tenancy agreement contains an implied covenant of quiet enjoyment of the rental unit and common areas in the residential complex. At common law, the covenant of quiet enjoyment promises that the tenant will enjoy the possession and use of the premises in peace and without substantial interference.

In order to prove an action for breach of the covenant of quiet enjoyment, the applicant is generally expected to demonstrate there has been a substantial interference with the

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ordinary and lawful enjoyment of the rental unit. It is necessary to balance a tenant's right to quiet enjoyment with a landlord's responsibility to maintain the premises so, generally speaking, temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

In my view, leaving fire doors open during a period of renovations does not breach the covenant of quiet enjoyment in these circumstances. In reaching this conclusion, I was strongly influenced by the undisputed evidence that the fire department or municipality had advised both parties that it was acceptable to leave fire doors open during construction provided workers were in the vicinity and by the Landlord's statement that he closes the doors at the end of the day and in the evening if he finds them ajar. I do not find that the Landlord acted unreasonably or maliciously. I also find that leaving fire doors open during under these circumstances would not bother a reasonable person and I do not, therefore, find that the Tenant is entitled to compensation for the fire doors being left open during renovations.

In my view, the threats made by the Landlord to begin renovations and to shut off the hydro to the rental unit do not breach the covenant of quiet enjoyment in these circumstances. In reaching this conclusion I was strongly influenced by the fact that the threats were made after the tenancy had lawfully ended; that the Tenant remained in the rental unit after the tenancy had lawfully ended; that there is no evidence that the Landlord had a history of threatening or intimidating the Tenant; that the threats were precipitated by the Tenant's non-compliance with the *Act*; and that the Landlord did not act upon those threats. I do not, therefore, find that the Tenant is entitled to compensation for the Landlord's comments.

Conclusion

As the Tenant has not established that the Landlord failed to comply with the *Act*, I hereby dismiss his claim for compensation. As the Tenant's Application for Dispute Resolution has been without merit, I also dismiss his application to recover the fee for filing this Application for Dispute Resolution.

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 13, 2009.

Dispute Resolution Officer