

DECISION

Dispute Codes MNDC, MNSD, OPT, RPP, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking monetary orders for compensation under the Act or tenancy agreement, for return of all or part of the security deposit, and for an order for the Landlord to return the Tenant's personal property, for an order of possession for the rental unit and to recover the filing fee for the Application.

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 to me.

I note both the Tenant and the Landlord had submitted some documentary evidence late for the hearing, or even after the hearing, in breach of the rules of procedure. Furthermore, they had not exchanged this evidence in accordance with the rules. The Landlord claims he was out of town, although I note he had an Agent representing him throughout the relative time period. Therefore, I have not reviewed or considered the late evidence submitted by either party.

Issues(s) to be Decided

Is the Tenant entitled to the relief sought?

Background and Evidence

The Tenant claims he was verbally and physically harassed by an Agent for the Landlord from December 31, 2009, to January 3, 2010.

The Tenant alleges the Agent for the Landlord attended the rental unit at approximately 11:00 p.m., on December 31, 2009. The Tenant claims he was never told by the Landlord that he had an Agent to represent him, and had no Notice that the Landlord or his Agent would be entering the rental unit.

The Agent wanted the Tenant to pay the rent for January 2010, at 11:00 p.m. on December 31, 2009. The Tenant testified that he told the Agent he had no cash, but would provide the Landlord with a cheque for the rent. The Tenant alleges the Agent for

the Landlord refused to take the cheque and then pushed him around the rental unit. The Tenant testified he was told the rental unit was already rented out to somebody else, and he had to get out. The police were called to attend the rental unit that night and on one other occasion.

The Tenant further alleges he received two threatening text messages from the Agent over the next days. They apparently said "get your stuff out" and "you're done you rat", or words to that effect.

The Tenant alleges the Landlord had a personal vendetta against him, since the Tenant had asserted his rights under the Residential Tenancy Act and was also telling the other renters their rights as well. The Tenant alleges the Landlord is running an illegal rooming or boarding house, full of renters.

The Landlord testified he was running a rooming house and had rented one room to the Tenant. He explained he had issued the Tenant a 10 day Notice to End Tenancy for unpaid rent on December 7th, 2009, and that the Tenant had paid nearly all of the rent. However, the Tenant did not pay this rent until several days after the statutory five day period as set out in the Notice. The Landlord asserts the tenancy had ended. He alleges that the Tenant had refused to vacate the rental unit and still owed \$10.00 for rent for December 2009. He further alleges the Tenant was consistently late paying rent during the tenancy.

The Landlord testified that the Tenant had used foul language and "put him down" in front of the other renters in the property. He testified he did not want to deal with the Tenant because of this and he sent his Agent over to collect the rent from the Tenant.

During the course of the hearing the parties agreed that the Tenant had received back \$200.00 of his \$250.00 security deposit. The Landlord claims the Tenant was overholding in the rental unit so he deducted \$50.00 for rent. The Landlord claims the Tenant signed an agreement waiving any further claims against the Landlord. The Tenant denies this and says he refused to sign this waiver, but he did accept the security deposit as paid.

Analysis

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

I find that the Landlord or his Agent significantly interfered with the Tenant's right to quiet enjoyment of the rental unit, pursuant to section 28 of the Act.

While the Tenant should have vacated the rental unit on the effective date of the Notice to End Tenancy, this does not give the Landlord or his Agent a right to enter the rental unit without the required Notice in section 29, nor does it give them the right to unduly harass the Tenant into leaving.

The Landlord, or his Agent, should have applied for an Order of Possession to evict the Tenant lawfully, rather than take matters into their own hands.

In regard to the losses suffered by the Tenant, I find he had insufficient evidence to show he was physically harassed by the Agent, as claimed by the Tenant. However, I do find there was a loss of quiet enjoyment and a failure to give the Notice, as described above. I make no order regarding the security deposit as I find it was dealt with by the parties at the end of the tenancy.

Therefore, having found the Landlord was in breach of the Act, I order the Landlord to pay the Tenant the sum of \$100.00 for loss of quiet enjoyment for three days, plus the Tenant's \$50.00 filing fee for the Application, for a total of \$150.00.

I grant the Tenant an order under section 67 for the balance due of **\$150.00**. This order may be filed in the Provincial Court (Small Claims) 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: January 18, 2010.

Dispute Resolution Officer