

DECISION

Dispute Codes MNDC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, for other reasons and to recover the cost of the filing fee from the Landlords for this application.

Service of the original hearing documents, by the Tenant to each Landlord, was done in accordance with section 89 of the Act, served via a process server on September 22, 2009. Affidavits of service were provided in the Tenant's documentary evidence.

Service of the amended hearing documents were served to each Landlord via registered mail to the Landlord's places of employment, which does not comply with section 89 of the Act which stipulates that if service is performed by registered mail it must be mailed to the address where the person resides or where the person conducts business as a landlord. The Tenant provided testimony that she had never conducted business with either Landlord at their place of employment. The Landlords testified that they did not receive copies of the amended application. Based on the aforementioned I find that service of the amended application was not effected in accordance with the Act and I hereby dismiss the Tenant's amended application, without leave to reapply, and will proceed with the original application.

The Landlords, the Tenant, and the Tenant's Advocate (Advocate) appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified that the verbal tenancy agreement began on December 31, 2008 and ended on March 14, 2009 when she vacated the rental unit. Rent was payable in

the amount of \$1,000.00 per month and the Tenant and Landlords agreed to have the rent paid in two payments of \$500.00 on the 15th and 1st of each month.

The Tenant testified that she had discussions with the male Landlord at work one day about the possibility of renting his basement suite. The Tenant stated that the male tenant who lived in an apartment across the hall from her residence at the time had discussions with her one day and made his way into her apartment. The Tenant testified that she was intimidated by this person, that she was afraid and did not feel comfortable living across the hall from him so she gave her landlord notice and made arrangements to move into the basement suite of the respondent Landlords.

The Tenant stated that she first saw the basement suite in November 2008 sometime and that it was during this walk through when the male Landlord told her that renovations would be completed on the suite before she moved in. The Tenant stated that it was also at this time that she came to a verbal agreement with the male Landlord that the Tenant would paint the rental unit and that the Landlord would reimburse her for materials and give her a receipt for \$500.00 as a security deposit in exchange for her labour. The Tenant confirmed that this agreement was verbal and there were no witnesses to this agreement. The Tenant could not answer why the Landlord would agree to issue her a receipt of \$500.00 in exchange for her labour when the Landlord did not know how long it would take her to complete the job. The Tenant stated that she could not remember how long it took her to paint the rental unit.

The Tenant stated that the Landlords' house was not for sale at the time she saw the rental unit in November 2008 or in December 2008 when she took occupancy.

The Tenant confirmed that she was granted unlimited access to the rental unit from the beginning of December 2008 and that she attended the rental unit on several occasions to paint it and move her possession in for the December 31, 2008 possession. The Tenant argued that she finished painting the rental unit in mid December and although the alleged renovations were not completed at this time she thought the Landlord would still work to have them completed before December 31, 2008, however this was not the case.

The Tenant argued that a second verbal agreement was entered into whereby the Tenant claims the Landlords agreed to pay her for her labour and materials to complete other renovations such as installing new flooring and baseboards.

The male Landlord argued that the only agreement he entered into was that the Tenant would be allowed access to the rental unit to paint it and that the Landlord would reimburse her for painting supplies. The male Landlord testified that there were no agreements made about labour or additional renovations.

The Tenant testified that when she provided the Landlord with her receipts and requested payment for her labour costs the Landlord became upset.

The male Landlord confirmed that he was upset and he did raise his voice but did not threaten the Tenant. The male Landlord clarified that he was upset because the Tenant was seeking \$50.00 per hour of labour for work that he did not agree for her to do and costs for materials she had purchased.

The Tenant confirmed that she did not have evidence to support her claims that the Landlord threatened her; however she did arrange a meeting for March 7, 2009 at which the Tenant found the male Landlord's behaviour more threatening.

The female Landlord testified and confirmed that she attended a meeting on March 7, 2009 with the Tenant and male Landlord and that it was during this meeting that the Tenant stated she was moving out. The female Landlord argued that the male Landlord attended the meeting for the first 10 minutes and when the Tenant stated that she had to leave and move out the male Landlord asked the Tenant when she wanted to move and she replied that she would move out in 24 hours. The female Landlord stated that both Landlords confirmed with the Tenant that she had paid rent unit March 15, 2009 and she could stay until that date however the Tenant replied by saying she was moving. The female Landlord stated that while everyone had raised voices there was no yelling or threats made.

The male Landlord confirmed that he raised his voice in the meeting and that he did not threaten the Tenant.

The Tenant confirmed she vacated the rental unit by March 14, 2009 however she did not sleep in the rental unit for all of the remaining days as she claims she was too afraid to be there.

In reviewing the testimony the Tenant confirmed that she had no previous conversations with the Landlords about her charging labour costs; she could not remember how long it took her to paint the rental unit; and that she did not know when the alleged receipt was issued to her.

When asked why she did not wait for the Landlord to give her a cheque on the day she attended the rental unit to drop off the keys, the Tenant argued that she was too upset and was only there to drop off the keys and not to accept a cheque.

I referred to the Tenant's evidence of her letter dated March 11, 2009 that was hand delivered to the Landlords by the Tenant when I asked her to clarify what she was

referring to in relation to laws broken and who was providing her with this information. The Tenant stated that she wrote the letter from her own information and no one was advising her.

The Tenant is seeking costs of \$179.20 (amount in original application) incurred to serve the hearing documents to the Landlords via a process server. The Advocate testified that they did not realize that the documents had to be served within three days so at the last minute they hired a process server to get the documents served in time.

The Tenant is seeking \$130.90 for the cost of a hotel room in a different city and province. The Tenant argued that she suffered an "anxiety depression attack" as a result of the Landlords' behaviour towards her and that the doctor she saw told her that she should return to her home town and see her previous family physician. The Tenant confirmed that she does not have evidence to support this.

The Tenant stated that she does not have a pre-existing condition and that she has no previous issue with men or being afraid of them. When I reminded the Tenant of her earlier testimony about the male tenant from her previous apartment she argued that she did not say she was afraid of him.

The remainder of the Tenant's claim is for costs relating to Psychologist's appointments in her hometown totally \$375.00, loss of wages of \$15,514.20, interest paid on credit cards \$175.83, labour costs of 48 hours @ \$25.00 per hour, costs of materials to complete renovations of \$673.04.

The Landlords stated that they are still in agreement to reimburse the Tenant for the \$673.04 for materials she had purchased however they do not feel they are responsible for any of her other claims.

Analysis

Section 7(1) of the Act provides that 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 the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent Landlords violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant Tenant did whatever was reasonable to minimize the damage or loss

A “**tenancy agreement**” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. I find that based on the above definition, oral terms contained in, or form part of, tenancy agreements and may still be recognized and enforced.

That being said, In the case of verbal agreements, I find that where verbal terms are clear and both the Landlords and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

Based on the testimony and documentary evidence before me I find that the parties entered into a verbal tenancy agreement and the relationship between the parties began to deteriorate towards the end of February 2009. As a result of the breakdown of the relationship the parties came to a mutual agreement that the tenancy would end and the Tenant would vacate the rental unit.

The Tenant provided contradictory testimony in response to my questions about if she had previous encounters with men who caused her concern. I note that the Tenant provided information that she moved to this city in December 2007 and that she could not provide me with information as to why a doctor in her current location would recommend that the Tenant move thousands of miles to attend a doctor she used to see, two years earlier, if the Tenant did not have a pre-existing condition.

While the deterioration of any relationship can be stressful on the parties involved, in this case I find that there is no evidence before me to support the Tenant’s claims that the situation which occurred with her Landlords was the underlying cause or only cause of her medical reaction or condition. Based on the aforementioned I find that the Tenant has failed to prove the Landlords violated the Act, Regulation, or tenancy agreement, causing the Tenant’s loss of wages of \$15,514.20, psychologist fees of \$375.00, hotel costs of \$130.90, and service of documents of \$179.20 for a total amount of \$16,199.30. I hereby dismiss the Tenant’s claim of the aforementioned \$16,199.30, without leave to reapply.

In regards to the Tenant's claim of \$673.04 for renovation materials, \$1,200.00 for labour costs, and \$175.83 of credit card interest charges, the testimony and evidence supports that the Landlords and Tenant had a verbal agreement whereby the Landlords would reimburse the Tenant \$673.04 for costs the Tenant incurred to purchase renovation materials. Therefore, I hereby approve the Tenant's claim in the amount of \$673.04.

There is no evidence before me to support that there were any agreements in relation to labour costs or credit card interest charges. Based on the above I find that the Tenant has failed to prove the test for damage or loss, as listed above, and I hereby dismiss the Tenant's claim of \$1375.83 (\$175.83 interest plus \$1200.00 labour), without leave to reapply.

The Tenant is seeking to recover the \$100.00 filing fee from the Landlords for this application. I have dismissed the majority of the Tenant's claim and have awarded the Tenant the amount the Landlords have attempted to provide for the Tenant since March 2009. Therefore, I decline to award recovery of the filing fee to the Tenant.

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for \$673.04. The order must be served on the Respondent Landlords and is enforceable through the Provincial Court 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 12, 2010.

Dispute Resolution Officer