



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: *DRI, CNC, MNDC, MNSD, PSF, LRE, LAT, RR, OLC, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for loss under the *Act* and for the filing fee. The tenant also applied to cancel the notice to end tenancy, for the return of the security deposit, to suspend the landlord's right to enter the rental unit, authorize the tenant to change the locks, allow a rent reduction for repairs and for an order seeking landlord's action to comply with the *Act*.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant moved out on December 15, 2009. Therefore, the tenant's application for most of the above was no longer necessary. Accordingly, this hearing only dealt with the tenant's application for compensation in the amount of \$2,985.00 for harassment by the landlord, for the return of his security deposit and for the recovery of the filing fee.

Issues to be decided

Has the tenant established a claim for compensation? Did the tenant provide the landlord with his forwarding address? Is the tenant entitled to the return of his security deposit and the recovery of the filing fee?

Background and Evidence

The tenancy started on June 01, 2005 and ended when the tenant moved out on December 15, 2009. The monthly rent was \$995.00 due on the first of each month. The rental unit was an apartment located in a residential complex.

The tenant testified that he works out of his residence and that his work is highly confidential and secret. He stated that once, sometime in 2006, while he was working he heard a knock on the door. He did not answer as he was involved in processing highly confidential files. He then heard someone attempting to use a key to open the door. The tenant held the door shut and looked through the peephole. He noticed the landlord with another person. The landlord advised him that the other person needed some measurements of the window to install blinds. The tenant advised the landlord to provide 24 hours notice prior to visiting the unit. The tenant stated that after this incident, he decided to change the locks.

The landlord denied having tried to enter the rental unit using his own key and stated that he only found out that the locks were changed on November 10, 2009 when he visited the suite with prior notice and in the presence of the tenant. The tenant admitted to having changed the locks in the early part of the tenancy, without permission. The landlord requested the tenant to provide him with a key. The tenant testified that due to the nature of his work, he did not want to give the landlord a key and was willing to pay for damages to the door if it had to be broken down to gain entry, in an emergency.

The tenant also testified that the heating in the apartment was inadequate right from the start of the tenancy. He stated that the landlord deliberately turned down the heat. The tenant informed the landlord several times and the landlord checked it out each time the tenant complained. The tenant also stated that the heat worked fine during the day, but not at night. The landlord stated that the controls are inside the apartment and therefore it was not possible for him to turn down the heat. He also stated that he checked the heating several times and there was nothing wrong with the system. The landlord stated that the apartment faces the inlet and sometimes a cold breeze blows off the surface of the water.

The landlord stated that the tenant would not allow him access to the suite in his absence and requested that all plumbing work be done on the weekend.

The landlord stated that it would be far too expensive to have work done on the weekend and therefore he was unable to get a plumber in to check the water flow, see if the zone valve/operator was working properly or bleed the water lines. However, the landlord stated that after the tenant moved out, he had the heating system checked out by the plumber and no problem was found. The landlord questioned the reason for the length of the tenancy if, as alleged by the tenant, the heating was inadequate.

The tenant stated that he lived with this inconvenience through the tenancy of over four years and believed that he was entitled to compensation for the lack of adequate heat.

The landlord stated that a fire alarm inspection was conducted in all suites with prior notice. On November 04, 2009, during the fire inspection, the landlord also checked out the plants that were on the balcony and were causing problems. Dirt was running down the side of the building and falling onto cars below. In addition, dirt was entering into the drainage system. The landlord stated that he found a messy dirt garden on the balcony with several plants growing out of the dirt that was placed directly on the balcony floor. The balcony also had other debris which posed a safety problem. The landlord stated that insurance would not cover any disaster if the balcony could not be used as an emergency exit. The tenant also had dirt and plants on the bathroom window sill. The tenant admitted that he collected wood and plants in the balcony for the purpose of attracting birds, some of which were rare and exotic.

The landlord verbally informed the tenants that the dirt garden would have to be removed immediately and then on November 08, 2009, the landlord served the tenant with a written request to do so.

On November 27, 2009, the vegetation was not removed from the balcony and the landlord served the tenant with a 30 day notice to end tenancy for cause with an effective date of December 31, 2009. The tenant did not pay rent for December and on December 03, 2009; the landlord served him with a ten day notice to end tenancy.

The tenant moved out on December 15, 2009, without providing the landlord with a forwarding address.

The landlord stated that he would like to claim costs to fix the damage left behind by the tenant and rent for December. I informed the landlord that I was unable to hear his claim as this was not his application and that he was at liberty to file his own application.

The tenant stated that the landlord spoke in a “violent” manner to him and his spouse. The landlord also harassed them by wanting to inspect the suite more than once a month in the month of November and had attempted to enter the suite without notice once in 2006. The tenant filed photographs of the plants in his balcony, peeling paint and condensation on a window. The photographs are black and white and therefore not very clear. The tenant stated that there was mould in the unit and the landlord simply told him to wipe it off. The tenant stated that the tone of verbal communication of the landlord amounted to harassment and caused the tenants extreme distress and anxiety. The tenant has applied to be compensated for harassment, aggressive behaviour of the landlord and for lack of adequate heating in the amount of \$2985.00

Analysis

Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. Every tenancy agreement contains an implied covenant of quiet enjoyment.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

In regard to the tenant's monetary claim for compensation for the loss of quiet enjoyment, I have reviewed the submissions of both parties and I find that the last two months of the tenancy were very stressful on both parties for different reasons. It is my determination that the parties found themselves in a situation which had progressively evolved and for which each had made some contribution to its unfolding. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support his claim of compensation for harassment and stress and therefore the tenant's claim for compensation is dismissed.

The tenant did not provide his forwarding address to the landlord. Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. The landlord now has the forwarding address of the tenant and is now required to return the security deposit along with the accrued interest or file an application to retain all or part of the security deposit within fifteen days of receipt of this decision.

Based on the documentary evidence and sworn testimony of both parties, I find that the tenant has not proven his case for compensation for the loss of quiet enjoyment. Therefore, the tenant must bear the cost of filing this application

Conclusion:

The tenant's application is dismissed in its entirety.

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