



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: *OLC, RPP, 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 for an order seeking landlord's action to comply with the *Act* and to return the tenant's property that he had in his possession.

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

Issues to be decided

Has the tenant established a claim for compensation for loss of quiet enjoyment? Is the landlord holding the tenant's property in contravention of the *Residential Tenancy Act*?

Background and Evidence

The tenant testified that sometime in December 2008, she needed space to store her furniture while her residence was being renovated. She requested her father (the landlord) to allow her to store her belongings at his residence and he agreed to do so. A year later, the tenant's residence sold and the tenant needed temporary accommodation.

The landlord lives on a farm that houses two residences. The landlord occupies one and the other contains two suites that are rented. The landlord agreed to allow the tenant to rent the upper suite of the second house at a deeply discounted rate of \$400.00 per month. The rent did not include utilities. The tenant moved in with her partner and pets. She did not pay a security deposit or pet deposit. There is no written tenancy agreement.

On May 24, the tenant gave the landlord verbal notice to end the tenancy effective July 24, 2010. The parties disagreed on the amount of utilities that were due and on June 27, 2010, the landlord served the tenant with a notice to end tenancy. The tenant failed to pay rent on July 01, 2010 and the landlord served the tenant with a second notice to end tenancy.

The tenant stated that from the time she gave notice to end the tenancy, the landlord caused her mental suffering by issuing eviction notices, demand notices, inflated utility bills and refusing to carry out repairs in the unit. The tenant also stated that the landlord did not provide her with laundry machines and caused noise disturbances late at night and early in the morning. The tenant also stated that the landlord refused to allow her to retrieve her property that was stored at his residence.

The landlord argued that he served the eviction notices for non payment of utilities and rent. He stated that he did not agree to provide laundry facilities in the rental unit, but allowed the tenant to do her laundry at his residence. He also stated that the noise disturbances that the tenant referred to were simply a part of a daily routine to feed and care for the farm animals. The landlord stated that the reason for not allowing the tenant to retrieve her property was to do with other matters that were not related to the tenancy.

The tenant has applied for an order to direct the landlord to return her property and to pay compensation for the loss of quiet enjoyment. The tenant has not disclosed the quantum of her claim for compensation.

Analysis

Section 2 of the *Residential Tenancy Act* addresses what this *Act* applies to. It states that the *Act* applies to a tenancy agreement, rental unit and other residential property. A rental unit is defined as living accommodation rented or intended to be rented to a tenant.

It is clear that the tenant entered into a verbal contractual agreement with the landlord to store her belongings at his residence. A year later she entered into a verbal tenancy agreement to occupy a rental unit that was located in a building on the same property but separate from the landlord's residence.

There is no evidence that these two contracts are in any way connected to each other. This *Act* does not apply to storage facilities that are at a location that is different from the residential unit and did not form part of the rental agreement. Accordingly, I find that I do not have jurisdiction over this matter and therefore am unable to order the landlord to return the tenant's belongings.

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 this case, the landlord served eviction notices in response to the tenant's non payment of rent and utilities. The noise disturbances that the tenant refers to are a result of routine activity on a farm. Based on the documentary evidence and sworn testimony of both parties, I find that the tenant has not proven her case for compensation for the loss of quiet enjoyment. Since the tenant has not proven her case for compensation, she is not entitled to the filing fee of \$50.00.

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: August 27, 2010.

Dispute Resolution Officer