



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes Landlord: OPR, MNR, FF
 Tenant: MNDC, O, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Landlord applied for an order of possession for unpaid rent, a monetary order for unpaid rent, and to recover the filing fee for the Application.

The Tenant applied for a monetary order for money owed or compensation under the Act or tenancy agreement and to recover the filing fee for the Application

The Landlord, a witness and the Tenant appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issues(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and for monetary relief?

Has the Landlord breached the Act or tenancy agreement, entitling the Tenant to an Order for monetary relief?

Background and Evidence

The tenancy began on November 15, 2009, on a month to month basis, rent is \$1,200.00 per month, payable on the first day of each month and the Tenant paid a security deposit of \$600.00 on an undetermined date.

The Landlord and witness testified that they served the Tenant a 10 day Notice to End Tenancy on July 28, 2010, in person. I note the Proof of Service was dated on July 24, 2010; however the Landlord and witness testified that the date of witnessed service was actually July 28, 2010.

The Landlord and witness testified that the Tenant has not paid rent for the months of June, July, August and September and currently owes the outstanding rent for \$4,800.00. The Tenant currently occupies the rental unit.

The Landlord and witness testified that they repeatedly called the Tenant inquiring about payments and each time he promised to pay. The Landlord and witness testified that they called the Tenant on August 25, 2010, and the Tenant stated he would not pay the unpaid rent.

The Tenant testified that after he was served the 10 day Notice to End Tenancy, he called the Landlord and was told by her to disregard the Notice. He considered the Notice cancelled.

The Tenant testified that he called the listing realtor, who informed him the rental unit was sold and that the Landlord would pay the moving expenses, which the Tenant said was \$2,000.00. He further testified that the Landlord said he would get two months' free rent for having to move.

The Tenant testified that he is entitled to punitive damages because the Landlord failed to disclose a material fact that the rental unit was allegedly for sale when they entered into the tenancy agreement. The Tenant testified that he realized after he moved in that the Landlord was an investor and not a landlord. The Tenant did not provide any evidence documenting a proof of loss, but only a written recitation of his testimony and a current real estate listing for the rental unit.

The Landlord and witness responded that the Tenant knew they wanted to sell the rental unit when he moved in as they had a discussion about him buying the residence, of which he expressed an interest.

The Landlord and witness denied the large number of showings and testified that the total was approximately six since January when the rental unit was relisted for sale.

The Tenant testified that his quiet enjoyment was continually being disrupted by realtor showings and that he is entitled to punitive damages.

The Tenant is seeking punitive damages in the amount of \$6,555.00, which includes \$600.00 for damage deposit, \$720.00 for moving expenses, Telus and Internet hookup for \$110.00, cable hookup for \$75.00, \$50.00 for the filing fee and \$5,000.00 for punitive damages.

Analysis

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

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Further the Tenant acknowledged he did not pay rent for the months of June, July, August and September.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I allow the Landlord to amend her Application to include rent for the month of September.

I find that the Landlord has established a total monetary claim of **\$4,850.00** comprised of outstanding rent for June, July, August and September, inclusive, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of \$600.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$4,250.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

In addressing the Tenant's claim for punitive damages, the Act does not allow for punitive damages, but rather aggravated damages are allowed under RTB section 16. I will consider that the request by the Tenant is for aggravated damages.

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 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 did whatever was reasonable to minimize the damage or loss

The Tenant is seeking \$6,555.00 in monetary compensation claiming the Landlord caused a loss to his quiet enjoyment and additional expenses in having to move. However the Tenant's disputed oral testimony before me does not prove the Landlord violated the Act, Regulation, or tenancy agreement, rather I find the Tenant's breach of the tenancy agreement resulted in the requirement to vacate the rental unit. The Landlord has a fundamental right to sell her property.

Based on the aforementioned I find the Tenant has failed to prove the test for damage or loss, as listed above, therefore I **dismiss** his application in its entirety.

Conclusion

The Tenant failed to pay rent and did not file an Application to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession and a monetary order for the balance due of **\$4,250.00**.

The Tenant's Application is **dismissed** without leave to re-apply.

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: September 27, 2010.

Dispute Resolution Officer