Dispute Resolution Services

DECISION

Dispute Codes   CNL, MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for landlord's use of property. The tenant also applied for a monetary order for compensation for the loss of quiet enjoyment and for the recovery of the filing fee.

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.

The landlord served the notice to end tenancy on July 15, 2010. The tenant moved out on September 28, 2010. Therefore, the tenant's application to cancel the notice is moot and accordingly dismissed. This hearing only dealt with the tenant's application for a monetary order for compensation and the filing fee.

Issues to be decided

Has the tenant established a claim for compensation for loss of quiet enjoyment? Is the tenant entitled to the filing fee?

Background and Evidence

The tenancy started on August 01, 2007. The monthly rent was $325.00. The tenant was employed by the landlord and the landlord received his rent by retaining the rental amount from the tenant's wages.

The tenant stated that on July 15, 2010, the landlord served him with a notice to end tenancy for landlord's use of property with an effective date of September 30, 2010.

The landlord informed the tenant that the property was sold but did not comply with the tenant's request for proof of sale. The tenant stated that about two weeks after the notice was served, the new owners started moving their belongings onto the property.

The tenant stated that he came home from work, one day to find construction of a storage shed going on in the yard. He also stated that the new owner left some of their belongings near his front door. The landlord agreed that he gave the new owners permission to store their belongings on site, prior to the end date of the tenancy.

The tenant stated that he felt that he was forced out due to the invasion of his privacy and has applied for compensation for the loss of quiet enjoyment. The tenant has not stated the amount of compensation that he is seeking.

Analysis

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. The landlord agreed that he permitted the purchasers of the property to store their belongings on the property prior to the tenant moving out

Therefore, I find that the tenant did suffer a partial loss of quiet enjoyment due to the actions of the landlord. *Residential Tenancy Policy Guideline #16* states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Accordingly I award the tenant a minimal award of $100.00 which is approximately a third of his monthly rent to compensate him for the inconvenience he suffered due to the new owners moving their belongings on to the property, prior to the end of the tenancy and for the disruption cause by the construction of a storage area in the yard.

Since the tenant has proven his case, he is also entitled to the filing fee of $50.00.

<u>Conclusion</u>

The tenant has established a claim of $150.00. I grant the tenant an order under section 67 of the *Residential Tenancy Act,* for this amount. This order may be filed in the Small Claims Court 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: October 14, 2010.

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Dispute Resolution Officer