



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation for damage or loss and for the landlord to comply with the act. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy was to start on October 1, 2010 with monthly rent of \$650.00 and a security deposit of \$325.00. There is a tenancy agreement signed by the landlord and tenant dated September 30, 2010 and a move in condition inspection was completed and signed by both parties on October 1, 2010.

The tenant testified that when she went to pay the rent on October 1 she only had \$570.00 and the property manager advised the tenant that the rent had to be paid in full. The tenant then went to get additional monies for rent and at this time, called the property manager to see if her daughter could move in to the unit also. The tenant stated that the property manager said she would check her daughter's name and let the tenant know the outcome. This request was denied as the signed tenancy agreement stated that there were to be 2 occupants only and the daughter's name showed in the property registry as having been a problem tenant in the past.

The landlord's property manager testified that the tenant would not have been rented to if the tenant had been forthcoming and provided the landlord with all 3 last names the tenant uses or has used. One of the tenant's prior names shows on the landlord's list as having been a problem tenancy however this list dates back to 2003.

The landlord's property manager stated that when she became aware of who the tenant was, the tenant's past rental history, who the tenant was associated with and the fact that the tenant did not have all of October's rent, the tenancy was withdrawn and all monies returned to the tenant.

There is no written agreement between the 2 parties agreeing to end this tenancy. As the tenant was denied possession of the unit on October 1, 2010 it is unknown if the tenant would have paid the rent in full and whether or not the landlord would have had to issue the tenant a 10 day notice to end tenancy for unpaid rent.

Analysis

Residential Tenancy Policy Guideline **30. Fixed Term Tenancies**

During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. For example, during the fixed term a landlord may end the tenancy if the tenant fails to pay the rent when due. A proper Notice to End Tenancy must be served on the tenant.

Residential Tenancy Policy Guideline **16. Claims in Damages**

Claims for Breach of Contract

Prior to making a claim for breach of the tenancy agreement, the Legislation permits either the landlord or the tenant to apply for arbitration for an order that the other party comply with the tenancy agreement or the Act.5 that governs the agreement. The purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out. It is up to the person claiming to prove that the other party breached the contract and that the loss resulted from the breach. The loss must be a consequence that the parties, at the time the contract was entered into, could reasonably have expected would occur if the contract was breached. Losses that are very unexpected are normally not recoverable. The party making the claim must also show that he/she took reasonable steps to ensure that the loss could not have been prevented, and is as low as reasonably possible.

Types of Damages

An arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

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- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.
- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

While it is recognized that the landlord had significant concerns surrounding this tenancy IE: unpaid rent, prior history of the tenant and proposed changes to the tenancy agreement; it should be noted that the steps taken by the landlord to end this tenancy did not comply with the Act.

Based on the documentary evidence and testimony I find that the tenant has not met the burden of proof to show that the actions of the landlord were sufficiently significant in depth, or duration, or both, that they represented a significant influence on the tenant's life. I find that the tenant has not established a monetary claim and the tenant's application is dismissed without leave to reapply.

Conclusion

I hereby dismiss the tenant's application without leave to reapply.

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: November 10, 2010

Dispute Resolution Officer