



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPB, CNR, DRI, MNSC, MNDC, OLC, RP, LRE, RR, & FF

Introduction

This hearing dealt with cross applications by the parties. The landlord filed an application seeking an Order of Possession for the rental unit on the basis that the tenant breached a material term of the tenancy agreement. The tenant filed a cross application seeking to cancel a notice to end tenancy due to unpaid rent, to dispute an additional rent increase, to seek compensation related to loss or damage suffered due to a breach under the tenancy agreement or *Act*, a request that the landlord comply with the *Act* and regulations, order that the landlord make repairs to the unit, suspend or set conditions on the landlord's right to enter the unit and finally to allow the tenant to reduce the rent due to loss of services or facilities agreed upon but not provided.

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.

During the course of the Dispute Resolution hearing it was determined, and agreed upon by all parties, that the tenant had vacated the rental unit. Since the tenant has vacated the rental unit the landlord's application is also no longer necessary as the landlord has taken possession of the rental unit.

As the tenant no longer resides in the rental unit a majority of the actions sought in the tenant's application are no longer required and I have only dealt with the tenant's claim requesting compensation due to loss or damage suffered under the tenancy agreement or *Act*.

As a final preliminary matter, I have not accepted the tenant's attempt to increase the monetary claim sought in this application. The tenant did not follow the required steps outlined in the rules of procedure to amend her application. Therefore, I am only addressing the tenant's monetary claim for the sum of \$1,100.00 comprised of \$450.00 in alleged overpayment of rent or security deposit and \$650.00 representing the loss the tenant experienced when she sold her washer and dryer.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Did the parties enter into a new tenancy agreement when the original tenancy agreement expired on August 31, 2010?

Did the landlord breach the tenancy agreement or *Act* entitling the tenant compensation for loss of quiet enjoyment under the *Act*?

Background and Evidence

The parties originally entered into a fixed term tenancy commencing June 1, 2009 and ending on August 31, 2009 for the monthly rent of \$1,500.00. In lieu of a security deposit the parties agreed to install the tenant's personal washer and dryer in the rental unit to be used by all tenants. The tenancy agreement reads that a security deposit of \$750.00 and a pet deposit of \$750.00 were waived in lieu of the installation and supply of the washer and dryer by the tenant.

The landlord stated that this was a temporary arrangement during the 3 month tenancy and it was not successful. When parties entered into the second tenancy agreement the landlord required that the tenant pay the full security and pet deposit and remove the washer and dryer from the common area of the rental unit. The landlord stated that the tenant did not respond to their requests and eventually they had the washer and dryer moved out of the rental unit and stored outside. The landlord submits that the tenant then left the washer and dryer outside for many months. The landlord claims that the tenant stated that she would move the appliances when she could.

Although the original tenancy agreement expired on August 31, 2009 the landlord's stated that they could not get the tenant to meet to sign the new agreement until the end of September 2009. The second tenancy agreement commenced on October 1, 2009 and ended effective August 31, 2010. The monthly rent remained at \$1,500.00 per month; however, the agreement now reads that the tenant is to pay a \$750.00 security deposit and a \$750.00 pet deposit as of October 1, 2009. The landlord stated that they agreed to allow the tenant to make payments towards the outstanding security deposits; however, the tenant only paid \$200.00 in October 2009 and \$200.00 in November 2009. Although the landlord claims that the deposits were not waived, they never pursued the tenant to pay the remainder.

When the second lease expired the landlord states that once again the tenant would not commit to sign the new lease. The landlord states that the tenant was told in July 2010 that she had to vacate at the end of August 2010 unless a new lease was signed. The landlord was willing to enter into a new tenancy agreement; however, at a monthly rent of \$1,550.00. The landlord understood that the parties would meet on August 25, 2010 to sign the new agreement; however, the tenant was not available. A third tenancy agreement was never signed; however the tenant did pay the addition \$50.00 rent for September 2010. The tenant also did not pay rent for October 2010 and the landlord learned from another occupant of the rental building that the tenant had vacated the unit on approximately October 14, 2010.

The landlord posted a notice on the door of the rental unit to enter the rental unit on October 16, 2010. The tenant agreed to meet at 6:00 p.m.; however, according to the landlord the tenant was not at the rental unit at that time. The tenant alleges that the landlord enter the rental unit before 6:00 p.m. in breach of the *Act* and provided a witness letter to attest to this claim.

The tenant acknowledged that she agreed to the terms of the tenancy agreements but has recently determined that the terms in the agreements were not enforceable. The tenant submits that she was not required to pay a security deposit as determined by the original tenancy agreement and that the landlord illegally accepted \$400.00. The tenant also submits that the landlord illegally increased the rent by \$50.00 contrary to the *Act*. The tenant believes that the tenancy agreement reverted to a month to month tenancy when the tenancy agreement expired.

The tenant denies the landlord's version of events and submits that there were no discussions to remove the washer and dryer. The tenant states that she discovered them removed and stored outside where the appliances suffered damage from the rain. The tenant states that she had to sell the appliances at a loss of approximately \$650.00. In addition, the tenant denied that she agreed to pay the security and pet deposits upon signing the second lease and had no explanation as to why she paid the sum of \$400.00 to the landlord in October and November 2009.

In addition to these monetary claims the tenant also alleged that the landlord has been harassing and verbally abusive. The tenant also alleged that the landlord has enter the rental unit without permission, as demonstrated by the witness evidence on October 16, 2010, and this demonstrates a dishonesty and repeating behaviour of the landlord. However, except for the witness letter respecting the landlord allegedly entering the

rental unit on October 16, 2010, the tenant had no evidence in support of her allegations.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In the circumstances before me the tenant has the burden of proving her claim.

The parties entered into two fixed term tenancy agreements and, I find, had the intent to enter into a third fixed term tenancy. I accepted from the evidence before me that the parties repeatedly entered into the next tenancy agreement after the original tenancy had expired. However, I accept that because of this pattern the tenancy agreement did not automatically revert to a month to month tenancy because both parties intended to enter into a new fixed term agreement. For example, when the first tenancy agreement ended on August 31, 2009 the parties did not continue the tenancy on a month to month basis but eventually entered into the new tenancy agreement on September 30, 2009. I accept that the same was intended with the fixed term tenancy ended on August 31, 2010. As a result, I find that the tenant did intend to enter into a new tenancy agreement at a monthly rent of \$1,550.00 and I deny the tenant's request to recover this sum.

I also find that when the parties entered into the second agreement on September 30, 2009 there was no agreement to waive the payment of the security and pet deposit in exchange for the use of the tenant's washer and dryer. The tenant immediately paid \$200.00 towards the outstanding security deposit and an additional \$200.00 in November 2009. It is unclear why the tenant ceased to make payments towards the security deposits or why the landlord failed to pursue payment of the full deposit; regardless, I find that the tenant paid a total of \$400.00 as a security deposit under the

tenancy agreement. The tenant may request the return of her deposit in accordance with section 38(1) of the *Act* by providing the landlord with her forwarding address in writing.

I deny the tenant's claim for the sum of \$650.00 related to the loss of value in her appliances. While I acknowledge the disputed verbal testimony regarding the removal of the washer and dryer, the tenant has not provided verification of the purchase price of the appliance or a receipt for the actual amount she received when she sold the appliances and no evidence that the appliances were damaged as claimed. The tenant also failed to provide any evidence that she mitigated her loss, for example by moving her property to a secure and dry location. While the landlord erred by not documenting in writing the request to move the washer and dryer and the breakdown of the original agreement the tenant remained responsible to move and properly store her property to minimize her loss. I find that the tenant has failed to establish any loss or damage for the sum of \$650.00 related to the sale of her washer and dryer.

Although the tenant did not formally claim any loss or value to her claim that the landlord was harassing or verbally abusing her, the tenant made repeated claims respecting this issue during the hearing and in her submissions. I find that the tenant had no evidence to collaborate her allegations and the landlord denied the tenant's allegations. I dismiss this portion of the tenant's claim.

Although the tenant did provide a witness letter alleging that the landlord accessed the rental unit, I find that there was no loss or damage as a result since the tenant had ended her tenancy at this point. The only purpose of accessing the rental unit was to complete a move out condition inspection and there was no loss experienced by the tenant. I acknowledge that the landlord vehemently denied this allegation.

I dismiss all the other aspects of the tenant's application as they are no longer necessary or have no remedy since the tenant has vacated the rental unit.

I dismiss the tenant's claim without leave to re-apply.

The landlord's application was no longer necessary as the tenant vacated the rental unit. However, I find that the landlord had to file an application seeking an Order of Possession because the tenant had not yet vacated. As a result, I Order that the landlord may recover the \$50.00 filing fee paid for this application from the tenant by deducting it from the tenant's \$400.00 security deposit. The remainder of the tenant's security deposit should be dealt with in accordance with section 38(1) of the *Act*.

Conclusion

The tenant's application is dismissed without leave to re-apply. The landlord's application is also dismissed as the tenant vacated the rental unit and the landlord no longer required an Order of Possession.

The landlord has been granted the recovery of the \$50.00 filing fee paid for this application.

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 22, 2010.

Dispute Resolution Officer