



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of her security deposit; for an Order requiring the Landlord to comply with the *Act*; and to recover the filing fee from the Landlord for the cost of filing this application. At the outset of the hearing the Tenant stated that her application for an Order requiring the Landlord to comply with the *Act* relates to her belief that she is entitled to compensation relating to the Notice to End Tenancy that the Landlord served to her.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to the return of her security deposit; to compensation for being served with a Notice to End Tenancy; and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 15, 2010; that the Tenant agreed to pay monthly rent of \$750.00 on the first day of each month; that the Tenant paid a security deposit of \$375.00; and that the Tenant is still occupying the rental unit.

The Landlord and the Tenant agree that the Landlord personally served the Tenant with a One Month Notice to End Tenancy for Cause, which had a declared effective date of October 30, 2010, on October 30, 2010.

The Landlord stated that the Notice to End Tenancy was served because he believes the Tenant and/or her boyfriend is disturbing him and another tenant who lives in the

residential complex, as the Tenant and/or her boyfriend come and go from the rental unit during the late night/early morning hours. The Tenant stated that she does not believe that the noise she is creating is unreasonable and she does not believe that the Landlord has grounds to end this tenancy.

The Tenant stated that she did not dispute the Notice to End Tenancy because she does not feel comfortable living in a complex where she is not welcome; she believes the Notice was racially motivated as her boyfriend is non-white; and her boyfriend no longer feels comfortable visiting her residence. She stated that her boyfriend works shift work and sometimes visits at odd hours.

The Tenant believes the service of the Notice to End Tenancy was racially motivated because the Landlord sometimes stares out his front window at her boyfriend. The Landlord stated that he has, on occasion, looked out his front window at the Tenant's boyfriend when he is outside late at night, but he was just ascertaining that the individual was actually the Tenant's boyfriend.

The Tenant believes the service of the Notice to End Tenancy was racially motivated because the female Landlord spoke with her about the Tenant's boyfriend visiting at odd hours and after being advised he works shift work the female Landlord replied that she just wanted to make sure he was not a drug dealer or a gang member.

The Tenant is seeking compensation, in the amount of \$1,250.00, for the cost and inconvenience of moving.

Analysis

Section 47(1) of the *Act* stipulates that a landlord may end a tenancy by giving notice for a variety of reasons. I find that the Landlord personally served the Tenant with a One Month Notice to End Tenancy, pursuant to section 47(1)(d)(i) of the *Act*, on October 30, 2010, because the Landlord believed that the Tenant or a person permitted on the property by a tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

I have made no determination on whether the Landlord did have grounds to end this tenancy pursuant to section 47(1)(d)(i) of the *Act*, as I consider that matter to be irrelevant. Regardless of whether the Landlord did have grounds to end this tenancy pursuant to section 47(1)(d)(i) of the *Act*, I found that the Landlord acted in good faith as he believed he had grounds to end this tenancy.

I find that the Tenant submitted insufficient evidence to cause me to conclude that the service of the Notice to End Tenancy was racially motivated. I find that it was entirely reasonable for the Landlord to look out his window when someone is entering his property at unusual hours to ascertain if the person is visiting him or someone who lives on the residential property and I do not find that this behaviour establishes that service of the Notice to End Tenancy was racially motivated.

While I find it somewhat insensitive to suggest that someone who keeps unusual hours

might be involved in illegal activities, I find that the assumption was likely primarily based on the hours kept, rather than on the individual's race.

I find that the One Month Notice to End Tenancy that was served on the Tenant had a declared effective date of October 30, 2010. Section 47(2) of the *Act* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the Tenant is deemed to have received this Notice on October 30, 2010, and rent is due on the first of each month, the earliest effective date that the Notice is November 30, 2010.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was November 30, 2010.

Section 47(3) of the *Act* stipulates that a notice served pursuant to section 47 of the *Act* must comply with section 52 of the *Act*. I find that the Notice to End Tenancy was served in the proper format.

Section 47(4) of the *Act* stipulates that a tenant may dispute a Notice to End Tenancy by filing an Application for Dispute Resolution within ten days of receiving the Notice. Section 47(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenant must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it. As there is no evidence that the Tenant filed an application to dispute the Notice to End Tenancy, I find that the Tenant accepted that the tenancy was ending pursuant to section 47 of the *Act*.

In my view the Tenant had an obligation to either dispute the validity of the Notice to End Tenancy within ten days or to accept that the tenancy is ending. I do not believe that the Tenant has the right to not dispute the Notice to End Tenancy and then seek financial compensation for the end of this tenancy.

In reaching this conclusion I was directed by section 7(2) of the *Act*, which stipulates that a tenant who claims compensation for damage or loss that results from the landlord's non-compliance with the act must do whatever is reasonable to minimize the damage or loss. In my view the Tenant would not have incurred any moving costs and would have suffered no damages or loss if she had successfully disputed the Notice to End Tenancy. If she had failed to successfully dispute the Notice to End Tenancy she would not have been entitled to compensation.

Section 67 of the *Act* authorizes me to award financial compensation only if damage or loss results from one party not complying with the *Act*. In my view the Tenant did not dispute this Notice to End tenancy because she no longer felt comfortable living in the rental unit because of her perception that she was not wanted. I cannot conclude that the Tenants decision to accept that this tenancy was ending is related to the Landlord

failing to comply with the *Act*.

For all of the aforementioned reasons, I dismiss the Tenant's claim for a monetary Order for money owed or compensation for damage or loss.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. As the tenancy has not yet ended, I find that the Landlord is not yet obligated to return the security deposit. On this basis I dismiss the Tenant's application to recover the filing fee, with leave to reapply after the tenancy has ended.

Conclusion

As the Tenant has failed to establish that her Application for Dispute Resolution has merit, I dismiss the Tenant's application to recover the cost of this Application for Dispute Resolution.

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 26, 2010.

Dispute Resolution Officer