



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD

Introduction and Preliminary Issues

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking monetary orders for compensation under the Act or tenancy agreement, for the return of double the security deposit, and for aggravated damages.

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.

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.

I note the Landlord argued that he had not been served with the Notice of Hearing or Application of the Tenant within the three days required under the Act. He submitted that the Tenant's Application should therefore be dismissed.

The Landlord submitted and testified that the Tenant had filed her Application on October 1, 2010, and received the Notice of Hearing from the Residential Tenancy Branch on October 5, 2010. He submitted and testified that the Tenant had not sent him the documents by registered mail until October 12, 2010. The Landlord argues that since her documents had not been served within the three days stipulated under section 59(3) of the Act, that her entire claim should be dismissed.

I note that the Landlord submitted his response to the Tenant's claims in writing, and this was received by the Residential Tenancy Branch on November 18, 2010, more than 10 weeks before the date of this hearing.

Issue(s) to be Decided

Should the Application for Dispute Resolution of the Tenant be dismissed?

Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

The Tenant moved into the first rental unit owned by the Landlord on September 8, 2008. The rent for the first rental unit was \$550.00 per month and a security deposit of \$275.00 was paid to the Landlord on September 8, 2008.

At the end of September 2008, the Tenant moved into a different, second rental unit owned by the Landlord. The Landlord advised the Tenant the rent would be reduced to \$450.00 for the second unit.

The Tenant testified that the government authority providing financial assistance to the Tenant made an error in processing the payment to the Landlord, and overpaid the Landlord with a cheque for \$650.00 or \$200.00 more than the required amount. The Tenant testified that the extra \$200.00 came out of her food allowance. The Tenant testified that the Landlord did not return the overpayment of \$200.00.

On October 10, 2008, the Tenant had a girlfriend guest stay overnight with her. On the morning of October 11, 2008, the Landlord and two other men attended the rental unit and entered the rental unit. The Tenant testified that the Landlord stuck his foot into the door and pushed his way into the rental unit.

According to the testimony of the Tenant, the Landlord shoved her guest, who was sleeping on the couch, to wake her up. The Tenant testified that the Landlord told her to get out of the rental unit. The Tenant testified she was afraid and very upset and did not argue with the Landlord. According to the testimony and submissions of the Tenant, he told her to put some stuff in a bag and get out. The Tenant left the rental unit and called the police to attend. The Tenant testified that the police arrived and informed her it was not a police matter and left.

The Tenant testified that the Landlord boarded up the rental unit with a piece of wood and screws. On October 14, 2008, the Tenant was able to get the rest of her personal property out of the rental unit. The Tenant had to stay with a friend and then in a woman's shelter before finding another rental unit.

The Tenant testified she was ill and emotionally stressed as a result of the Landlord's actions. She testified and submitted that the Landlord and the two other men who attended the rental unit bullied and intimidated her. She testified that the two different rental units she occupied were not fit to live in to begin with, as there were water leaks, mould, mice feces and peeling paint in the units. The Tenant testified that the five other renters in the building had to share one bathroom, which was filthy.

On January 29, 2009, the Tenant wrote the Landlord requesting the return of her security deposit and provided her forwarding address.

The Tenant claims against the Landlord for \$200.00 for the overpayment of rent, \$300.00 for the return of prorated rent for October of 2008, for \$550.00 for the return of double the security deposit and \$500.00 for aggravated damages for emotional stress, humiliation, intimidation and hardship due to the illegal eviction.

During the course of the hearing, I explained to the Landlord that I was not dismissing the Tenant's claim and he should proceed to reply to the merits of the Tenant's claim, and he testified he had submitted no evidence to deny the Tenant's claim.

When I asked the Landlord if he was not denying the Tenant's claim he replied he was not prepared to deny the claim and had no evidence to support his position.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Application of the Tenant should not be dismissed.

When questioned about the delay in sending the Landlord the documents, the Tenant testified she had sent the documents to the Landlord on October 12, 2010, by registered mail. She testified she was told to serve the Landlord by registered mail. The Tenant also testified that she had to wait to get the money to pay to send the documents by registered mail. She testified that she contacted the Residential Tenancy Branch and was informed by the Branch that she could send the documents by October 12, 2010, by registered mail.

When questioned about how he was prejudiced by the Tenant's delay in sending him the documents, the Landlord simply replied that the Act requires service in three days and he wanted her claim dismissed. The Landlord provided no evidence or submissions regarding how he was prejudiced by the delay in being served with the Application and documents.

I find that the Landlord has not been prejudiced by the delay in being served with the Tenant's documents. He had ample opportunity to provide evidence and a response to the Application.

The Landlord did provide a response to the Tenant's claims and had several weeks to provide any other evidence he wished to rely on in this matter. The Landlord should or ought to have been aware that a Dispute Resolution Hearing is a formal, legal process and it is up to a party to prepare for a hearing as fully possible. If he had evidence to provide for any issue in this matter it should have been submitted for this hearing.

Having considered the Tenant's evidence and testimony, and the lack of any significant prejudice to the Landlord's natural justice rights in receiving the documents seven days after the date he was to be served and some 11 weeks before the scheduled hearing, I found that these were exceptional circumstances, and pursuant to section 66 of the Act, I allowed the time limit to be extended during the course of the hearing.

I also accept the testimony of the Tenant that she was informed by the Residential Tenancy Branch that she could send the documents by registered mail on October 12, 2010. Therefore, I find the Tenant was allowed to serve the documents within a different period specified by the director, as set out in sections 9.1 and 59(3) of the Act.

I further find that the Landlord has breached the Act and tenancy agreement.

I find that the Landlord breached section 29 of the Act by failing to give the Tenant the required notice to enter the rental unit.

I find the Landlord breached section 38 of the Act by failing to return, or claim against, the Tenant's security deposit within 15 days of receipt of the forwarding address of the Tenant, or the end of the tenancy.

I find that the Landlord breached section 44 of the Act by failing to end the tenancy in accordance with the Act.

I find that the Landlord acted in a wilful and deliberate manner in evicting the Tenant without any authority under the Act, and the manner of this eviction was intimidating and threatening to the Tenant. I find that the distress caused to the Tenant was reasonably foreseeable by the Landlord. Therefore, I find that the Tenant has proven aggravated damages in this matter.

I also find the Landlord's breaches of the Act have caused the Tenant to suffer losses and damages.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Having made the above determinations, I find that the Tenant has established a total monetary claim of **\$1,551.30**, comprised of \$200.00 for an overpayment of rent, \$300.00 for return of prorated rent for October, \$550.00 for return of double the security deposit pursuant to section 38 of the Act, \$1.30 for interest on the original amount of the security deposit held, and \$500.00 for aggravated damages.

Conclusion

I find the Landlord breached the Act. I find the Tenant's claim should not be dismissed.

I grant the Tenant an order under section 67 for the amount due from the Landlord of **\$1,551.30**. This order may be filed in the Provincial Court (Small Claims) 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: February 03, 2011.

Residential Tenancy Branch