



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: MNDC, AS, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking the following:

- .A Monetary Order for money owed or compensation for damage or loss under section 67 of the Act, Regulation or tenancy agreement;
- An Order permitting the tenant to change the locks on the rental unit;

Both parties attended and gave testimony in turn.

At the outset of the hearing it was established that the tenant had vacated the unit and the forwarding address had been provided to the landlord on March 15, 2011.

Accordingly the portion of the application relating to changing the locks was no longer at issue and the hearing dealt solely with the tenant's claim for compensation under section 67 of the Act for loss of quiet enjoyment and other damages.

Issue(s) to be Decided

At this hearing the issues to be determined, based on the testimony and the evidence, were whether or not the tenant has proven that the tenant suffered loss or damage due to landlord's failure to comply with the Act or tenancy agreement and whether or not the tenancy was devalued due to loss of peaceful enjoyment of the suite.

Background and Evidence

The tenancy began on October 15, 2009 with current rent of \$1,225.00 due on the 15th day of each month. A security deposit of \$500.00 and pet-damage deposit of \$500.00 were paid. The fixed term tenancy had transformed into a month to month tenancy.

The tenant testified that the landlord had engaged in harassment by pressuring the tenant to sign a new tenancy agreement with the new owner who had recently purchased the rental unit. The tenant stated that the landlord had repeatedly approached the tenant trying to get the tenant to agree to changes in the tenancy terms

despite the fact that there was already an existing agreement in place. The tenant testified that, in reprisal for the tenant's refusal to agree to a new tenancy contract, the landlord made threatening comments and insisted that the tenant issue the landlord with post-dated cheques instead of the past practice of collecting the rent. The tenant stated that the interference by the landlord had significantly devalued the tenancy by causing a loss of quiet enjoyment from February 22, 2011 until the tenant vacated on March 15, 2011 and the tenant is claiming 100% abatement for this period in the amount of \$962.48. The tenant testified that, because of the landlord's actions, the tenant was also forced to end the tenancy and did so without giving the landlord one-month notice in writing as required by the Act. The tenant vacated on March 15, 2010 without paying the rent for the next month. The tenant stated that he had to take time off work and suffered a loss of income and a great deal of stress. The tenant's position is that the landlord should be held liable for the moving costs of \$1,225.00. The total claim is for \$2,187.48 plus the \$50.00 cost of filing the application.

The tenant also gave evidence of problems with the tenancy and the building. However this evidence was determined not to be relevant nor material to this dispute before me.

The tenant submitted a copy of the original tenancy agreement, a copy of the proposed agreement, written testimony, copies of letters and copies of email communications.

The landlord disputed the tenant's testimony. The landlord acknowledged that there were overtures made to change the agreement or some of the terms in the tenancy agreement by consent. However, according to the landlord, no pressure nor threats were made. In fact, the tenant had, of his own volition, presented the landlord with a counter-proposal in relation to suggested terms to include in the agreement. The landlord testified that the tenant's proposal was found not to be acceptable. The landlord stated that there was no loss of quiet enjoyment caused by the normal communications made by the landlord.

The landlord also disputed the tenant's allegation that he was forced to move out on short notice. The landlord stated that, at no time did the landlord issue a Notice to End Tenancy. The landlord pointed out that it was the tenant who arbitrarily decided to terminate the tenancy with insufficient notice. The landlord also pointed out that the tenant left without paying the rent owed for the period from March 15, 2011 to April 14, 2011 and the landlord therefore incurred a loss of \$2,025.00. The landlord did not agree with the tenant's claim for reimbursement for moving costs.

Analysis

Only the evidence and testimony relevant and material to the issues under dispute and the findings in this matter are described in this decision.

In regard to the monetary claim for a rental abatement for loss of quiet enjoyment and for the costs of moving, an Applicant's right to claim damages from the other party is dealt with under sections section 7 and 67 of the Act. Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for any damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under the circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act, agreement or an order
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant; that being the tenant; to prove the existence of the damage/loss and that it stemmed directly from a contravention of the Act, on the part of the respondent.

Section 28 states that a tenant is entitled to quiet enjoyment including, but not limited to:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that under the Act, a landlord is expected to take reasonable measures to ensure that the quiet enjoyment of a tenant is not violated.

In case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant would have to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions or the inaction by the landlord which permitted physical interference by an external force within the landlord's power to control. The level must have been sufficient to render the premises unfit for occupancy for the purposes for which they were leased.

I find that the term "unreasonable disturbance" is a subjective determination that may widely vary from one individual to another. I find that the landlord did not have the right to insist on changes to the tenancy agreement. Section 14 of the Act states that standard terms in a tenancy agreement cannot be changed and that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

In this instance, the landlord's position was that the tenant was merely asked about changing the terms and the agreement and there was some negotiation between the parties. Had the landlord unilaterally imposed new terms or a new agreement, I would find this to be a clear violation of the Act. However, while the landlord's persistence may have been inappropriate as it was perceived to be undue pressure by the tenant, I find that the communications about payment of rent did not constitute a serious violation of the Act by the landlord. Accordingly, I find that the loss of quiet enjoyment, would not warrant a 100% rent abatement for the period in question. I find that the tenant would be entitled to nominal damages for the inconvenience of dealing with the landlord's behaviour, in the amount of \$150.00.

I find that the tenant categorized his violation of the Act in terminating the tenancy without adequate notice, as a logical response to the landlord's overbearing conduct. However, the act offers a remedy for such situations. Section 58 of the Act states that: "a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to
 - (A) the tenant's use, occupation or maintenance of the rental unit, or
 - (B) the use of common areas or services or facilities.

I find that the tenant contravened the Act by not following the appropriate mechanism to resolve the tenant's serious concerns resorting instead to termination of the agreement.

Section 44 of the Act outlines all acceptable ways and circumstances under which a tenant or a landlord can end the tenancy without violating the Act, and section 45 states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the agreement. In this instance to comply with the Act, the tenant would be required to give written notice no later than February 14, 2011 to vacate the unit on March 15, 2011. (my emphasis)

There is no provision in the Act that would permit the tenant to unilaterally terminate the tenancy without proper notice as this tenant chose to do. Even if the tenant could successfully defend his choice to vacate without first seeking dispute resolution as required under the Act, I find that granting the tenant monetary compensation for this action would be unconscionable. Regardless of what the landlord may have done to influence the tenant's decision in this regard, I am not prepared to grant a monetary award for the tenant's blatant contravention of the Act. Moreover, to satisfy element 4 of the test for damages, the tenant would have to take reasonable steps to minimize the loss, including trying to salvage the tenancy by following the process to resolve the disputes. In any case, the tenant would have incurred moving costs at some point in the future whenever he chose to vacate. Given the above, I find that the tenant is not entitled to compensation for moving costs.

I find that the tenant is entitled to compensation in the amount of \$150.00 and the \$50.00 cost of this application for a total monetary claim of \$200.00.

Conclusion

I hereby grant the tenant an order under section 67 for \$200.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The remainder of the tenant's application is dismissed without leave. The tenant's security deposit must be administered in accordance with section 38 of the Act.

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: March, 2011.

Residential Tenancy Branch

