



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, O

Introduction

This decision deals with two applications for dispute resolution, both filed by the tenant. Both files were heard together. The tenant seeks a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and other issues.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were sent to the landlord by registered mail on January 21 and February 16, 2011. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing and the hearing proceeded in the landlords' absence.

Both parties were provided the opportunity to present evidence and make submissions. As the landlord did not appear the submissions were made by the tenant. On the basis of the evidence presented at the hearing, a decision has been reached.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- What are the tenants other issues?

Background and Evidence

The tenant testifies that this tenancy started on November 01, 2004 in another unit in this building and he moved to a new unit on December 01, 2010. The tenant states he only has a written tenancy agreement for his tenancy in his old unit. The tenant states his rent was \$774.00 which was due on the 31st of each month. The tenant paid a security deposit of \$375.00 on November 01, 2004. The tenant states he attended a move in condition inspection with the landlord but did not receive a copy of the report. The tenant states the new unit was dirty including the carpet and walls, and there were problems with the fireplace lights, sliding door and closet doors. No move out condition inspection was done when the tenancy ended on January 31, 2011.

The tenant testifies that he was harassed by the landlord and he lost peace and quiet enjoyment of his unit because of constant threats of eviction by the landlord. The tenant states he was moved into this unit because of noise from other tenants. He states at that time there was a different manager who decided to move the tenant to this unit. However, a new manager was then employed who continually harassed the tenant about noise from his unit, his failure to remove a plant from his old units' balcony, items left in the tenants parking stall notices of entry to his unit. The tenant testifies these threats of eviction started after he complained to the manger about the repairs required in his unit which were identified on his move in inspection but which were never completed by the manager.

The tenant states he received many complaint letters regarding noise, his plant, items in his parking bay and notices to enter his unit from this manager and each letter threatens eviction. He states he suffered from ill health and could not move the plant at that time but he states he did clear out the items in his parking stall and the noise complaints are completely unfounded.

The tenant states the managers' approach towards him was intrusive. She would knock on his door two or three times a day and on one occasion she entered his unit after knocking when he did not answer the door because she told him she wanted to show someone the

unit. The tenant states he eventually gave the landlord his Notice to end his tenancy because of this harassment, threats of eviction and his ill health. The tenant seeks to recover \$5,000.00 from the landlord for his loss of quiet enjoyment.

The tenant states the landlord claims he owes them \$754.00 however he disputes this sum and states he only owes them \$309.00

Analysis

The landlord did not appear at the hearing to dispute the tenants claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and affirmed testimony before me.

The tenant seeks compensation for the loss of quiet enjoyment of his rental unit to the sum of \$5,000.00. The tenant has provided documentary evidence of letters sent to him by the landlord requesting he rectify some issues, allow entry to his unit and letters regarding outstanding rent. In the letters the landlord has threatened the tenant with eviction if he does not comply with these letters. I refer the tenant to a similar case dealt with in the Supreme Court of Whiffin v. Glass & Glass (July 26, 1999). In this case it was held that attempts by the landlord to end a tenancy, if he believes he has grounds, do not constitute a breach of the covenant of quiet enjoyment of the premises. That case is the authority over this issue, and states that as long as a landlord believes he has reason to end the tenancy, he can make that assertion "frequently, emphatically and even rudely" and that the landlord is entitled to threaten proceedings in the courts for possession, even if the landlord is wrong. The tenants remedy would be to dispute the notice ending the tenancy once given. Consequently, in this matter I find the landlord is entitled to threaten eviction even if they are wrong and issue warning letters and Notices to a tenant. Therefore, the tenants' application for compensation due to these threats is dismissed.

With regard to the tenants claims that the landlord failed to make repairs in his unit which affected his health; in this matter the burden of proof falls to the tenant to show what repairs

were required, his attempts to notify the landlord of his requests to have the repairs done and any other evidence to show the effect on his health. As the tenant has provided insufficient evidence to support his claim this section is also dismissed.

With regard to the tenants second application regarding a dispute about how much rent he owes to the landlord; as the landlord has not filed a claim to recover any rent from the tenant I am not prepared to make a finding in this matter and it should be dealt with at a time if and when the landlord was to file an application for a Monetary Order. Consequently the tenants' second application is also dismissed.

Conclusion

The Tenant's applications are dismissed 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: April 05, 2011.

Residential Tenancy Branch