



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an application by the tenant for monetary compensation and recovery of the security deposit. The tenant, a witness for the tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, I confirmed that a portion of the tenant's application was for return of \$700 for September 2010 rent. In a previous dispute resolution matter that proceeded by way of direct request, the landlord was awarded \$700 for September 2010. As the matter of September 2010 has already been decided, I cannot hear the matter again, and I accordingly dismissed that portion of the tenant's application.

In the hearing, the landlord and tenant confirmed that the landlord still holds the security deposit of \$750 in trust. Under section 38(4) of the Act, a landlord may retain the security deposit, and any applicable interest, from an amount that the tenant has been ordered to pay to the landlord. In this case, the landlord held one monetary order against the tenant at the time of this hearing, and another application of the landlord for further monetary compensation had just been conducted and the decision was pending. I informed the parties that I therefore would not address the security deposit in this hearing. The landlord may retain the security deposit and applicable interest in partial or full compensation of any amounts that the tenant has been ordered to pay the landlord in a monetary order. If there is any outstanding balance of the security deposit, the landlord must return that balance to the tenant in accordance with the Act.

The landlord submitted 61 pages of late evidence that she did not serve on the tenant. I did not admit or consider that evidence in this decision.

Issue(s) to be Decided

Is the tenant entitled to \$1500 for harassment and loss of quiet enjoyment?

Background and Evidence

The tenancy began on August 1, 2010, and ended on September 30, 2010. The monthly rent was \$1500. The tenant has applied for compensation of \$1500, the equivalent of one month's rent, for harassment by the landlord and loss of quiet enjoyment for the duration of the tenancy.

The evidence of the tenant was as follows. The landlord lived in the suite below the rental unit, and she constantly annoyed and harassed the tenant, her family and even her dog. In early August 2010, shortly after the tenancy began, the landlord moved the tenant's possessions that were in the backyard up onto the porch, and told the tenant that now there would be no outside storage for anything. On August 11, 2010, the landlord shut off the power for the whole house because the tenant was doing laundry and the noise disturbed the landlord. On another occasion the landlord shut off the water without notice. In another incident, the landlord removed the tenant's mailbox and replaced it with a cereal box. The tenant also provided documentary and testimonial evidence of steps the landlord took such as complicating the move-in inspection, asking the tenant to pre-pay utilities, constantly calling and texting the tenant and serving multiple notices to end tenancy, which the tenant felt amounted to harassment.

The response of the landlord was as follows. The landlord acknowledged the incidents where she shut off the power and the water, but stated that she was not aware that she was not allowed to do so. The landlord also acknowledged moving the tenant's possessions onto the porch, which she did because of a problem with raccoons. The landlord stated that she did replace the tenant's mailbox with a cereal box, because she had noticed that the tenant's mailbox was "falling," and when she took it down to repair it, the tenant demanded that the landlord immediately replace it. The landlord replaced it with the nearest thing at hand, which was a cereal box.

Analysis

I find that the tenant has provided evidence that clearly shows some interfering behaviour by the landlord, particularly when the landlord moved the tenant's possessions in the backyard, and shut off power and water. Some of the landlord's actions may have been due to her inexperience as a landlord, but I find the incident regarding the mailbox was an intentional, malicious and extremely unprofessional act by the landlord. I therefore find that the tenant is entitled to compensation for loss of quiet enjoyment. However, I do not find that the tenant has provided sufficient evidence to demonstrate that her quiet enjoyment was disturbed for such duration or to such a degree that she is entitled to compensation equivalent to half of her rent. I find that the

tenant is entitled to compensation of \$600, the equivalent of 20 percent of rent paid for the duration of the tenancy.

The tenant is also entitled to recovery of the \$50 filing fee for the cost of her application.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$650. This order may be filed in the Small Claims Court 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: April 5, 2011.

Residential Tenancy Branch