

DECISION

Dispute Codes CNC, MNDC

Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy for cause, a monetary order request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

At the outset of the hearing it was clarified by the Tenant that she no longer wished to cancel the notice to end tenancy for cause. The Landlord has stated in his evidence that he wished for an order of possession. Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows:

Both parties have mutually agreed to end the tenancy on July 31, 2011 at 1:00 p.m. The Landlord is granted an order of possession to record this mutual agreement.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for compensation for loss of quiet enjoyment pursuant to Section 28 of the Residential Tenancy Act?

Background and Evidence

Both parties agree that the monthly rent is \$970.00 and that the Landlord currently holds \$475.00 for the security deposit. The July 2011 rent is fully paid (\$495.00 paid July 1, 2011, \$475.00 applied from overpayment of security deposit as noted in decision dated June 21, 2011 in file no. 772867.

Both parties attended the hearing and have referred to the other party's evidence package.

The Tenant has made a claim for a total of \$300.00. The Tenant states that this consists of \$90.00 from interest charges to the security deposit, \$42.00 for interest charges for the overpayment of rent decided in file no. 772867, the recovery of the \$50.00 filing fee and \$118.00 for the loss of quiet enjoyment pursuant to section 28 of the Residential Tenancy Act. The Tenant has stated that the loss of quiet enjoyment has resulted in the dropping of her grades at university and that the \$118.00 is a token amount to cover costs in penalty fees for withdrawing from courses. The Landlord has disputed this, but not referred to anything specific. The Tenant has not provided any evidence of fees charged. The Tenant cites issues over the last 1 ½ years that have occurred while she has resided at this rental. The Tenant states that the loss of quiet enjoyment is from contact over issues of the overpayment of rent for additional guests. This issue was decided in file no. 772867.

Analysis

At the commencement of the hearing, I determined that not all evidence was properly served by both parties. I determined that the evidence in dispute was not relevant to the Tenant's application and only the relevant documents were considered in the making of this decision for the Tenant's loss of quiet enjoyment. As such, based upon the submitted relevant evidence both parties have been deemed to have been properly served with the notice of hearing packages.

I find that there are no provisions in the Act for the recovery of interest from an overpayment of rent. There is currently 0% set for the years 2009 to 2011 for interest calculations for the award of the return of security deposits. No interest is applicable for these years. The Tenant's application for interest for the security deposit and interest for the overpayment of rent is dismissed. In any event the return of the security deposit would be subject to the normal rules from the Residential Tenancy Act in ending a Tenancy.

I find that the Tenant has failed to establish a claim for the loss of quiet enjoyment. The evidence submitted by the Tenant has failed to show a substantial interference by the Landlord. The Tenant has shown that each dispute was dealt with between the parties. In one instance a negotiation resulting in the overpayment. The Tenant has not shown an ongoing breach. The issue of the overpayment of rent for guests was dealt with in accordance with the Tenant's application for dispute. Accordingly, I dismiss the Tenant's application for loss of quiet enjoyment. The Tenant's application is dismissed.

Conclusion

The Landlord is granted an order of possession for July 31, 2011 at 1:00 p.m. by mutual agreement.

The Tenant's application for a monetary order is dismissed.

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: July 18, 2011.

Residential Tenancy Branch