



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNL MNDC FF

Preliminary Issues

At the outset of the hearing the Tenant advised she vacated the property on June 17, 2011 and was therefore withdrawing her requests to cancel the notices to end tenancy.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, the Landlords confirmed receipt of the Tenant's hearing documents, the parties acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a verbal tenancy agreement which began on December 5, 2010 and ended when the Tenant vacated the property on June 17, 2011. Rent was payable on the first of each month in the amount of \$720.00 and on or before December 5, 2010 the Tenant paid \$360.00 as the security deposit. The security deposit was returned to the Tenant in full on May 20, 2011. No walk through inspection reports were completed at the onset or at the end of the tenancy.

The Tenant testified that when she first saw the unit it was a mess and the Landlords told her they had a bad tenant who put paint on everything and damaged things. She had told the Landlords at the beginning of the tenancy that she was seeking a long term tenancy and that she also needed access to a storage area.

She stated the Landlords and their three children had previously moved out of the upper floor in order to do some minor renovations so they could rent it out as they were having financial difficulties. During this time they were occupying the one bedroom rental unit that was in the lower level beside her unit. Then on May 4, 2011 the Landlords came and told her that they needed her to move so they could occupy her two bedroom unit as the one bedroom unit was just too small for their family. She told them she could not move unless they returned her full security deposit so she could use the money to put down on another unit. They agreed and brought her a post dated cheque that was dated for May 20, 2011.

She contacted the *Residential Tenancy Branch* to find out her rights and when she informed the Landlords she was entitled to one free month's rent they became very upset and began to be verbally abusive. Over the period of the next few weeks the Landlords became more verbally abusive towards her and her guests. They swore at her daughter when she came to visit and said things like "white trash" to her guests. She began to look for another place as soon as possible. As a result of having to move in such a hurry she is seeking \$1,468.00 in compensation which is comprised of the following:

- \$40.00 (2 hours x \$20.00) labour to replace all of the light switch and electrical cover plates. The Landlords paid for the parts and expected her son in law to replace them for free. There was no agreement between the parties that the Landlords would pay to install them.
- \$408.00 (34 hours x \$12.00) labour to clean the rental unit and scrape paint off of everything that was left by the previous tenant. The Tenant confirmed she had seen the condition of the suite prior to agreeing to rent the unit and she would not have ever claimed for this labour had she stayed there for five years however after considering how she was forced to leave she wanted to be compensated for doing this work. She did not have a prior agreement with the Landlords for reimbursement of her labour.
- \$300.00 (5 months x \$60.00 per month) for reduced rent as she was never given the storage unit. She said the Landlords promised her a storage room under her patio from the beginning and it was never made available to her so she had to keep her stuff in the second bedroom. When she first moved in the Landlords

kept telling her they were getting it ready and it would be available soon but that never happened.

- \$720.00 for rent she had paid for May 2011. She is seeking this money because of the harassment she had to endure from the Landlords forcing her to move. She stated that she had no peace from May 4, 2011, when they first told her she had to move. The Landlords not only harassed her but all of her guests. They were sworn at and her guests were told to get off their property.
- She vacated the property June 17, 2011 and did not pay anything for June 2011 rent as this was to be her free month for having to leave for Landlords' use of the property.

The Landlords testified and stated the Tenant's claim is all made up and she was lying. They never promised her a storage room. They confirmed they returned her security deposit on May 20, 2011 because the Tenant requested it to be returned to her. They say they evicted the Tenant because she had two cats that they were not aware of and the Tenant's daughter would bring her dog over and the Tenant would allow him to go to the bathroom in his yard.

The Landlords confirm they evicted the Tenant in May but that it was verbal notice because she had cats and was babysitting too many children in the rental unit. She told them she had found a place to move and would be out by the end of May 2011 and then she stayed. When asked why they did not evict her sooner they said they were forced by the Tenant to let her keep her cats as they felt sorry for the Tenant because she is old. In addition to having cats and babysitting too many children the Tenant was smoking inside the bathroom and keeping the fan on at night which disturbed their children.

The Landlords stated that they have not moved into the Tenant's rental unit and that they heard someone knocking on the rental unit door last week so they went downstairs to answer the door and it was their former Tenant. They re-rented this unit and entered into a written tenancy agreement as of June 18, 2011 for a tenancy agreement that was to begin on July 1, 2011. They confirmed their new tenant had not moved into the unit as of today's hearing, June 29, 2011. They stated they found this new tenant through their church and that they needed to get the storage prepared for him before he could move in.

In closing the Tenant stated she has had these cats for nineteen years so she would not risk losing them by not telling the Landlords about them. The Landlords told her she could have the cats, no problem, as they had just adopted three kittens for their children. She agreed that she had a conversation with the Landlords about their

concern for her minding children at which time she told them she was babysitting her grandchildren for a few days for her daughter. The Landlords refused to give her written notice to end her tenancy and then later gave her a 10 Day Notice and a 1 Month Notice for cause when she refused to pay June 2011 rent.

The Tenant's witness testified she was with the Tenant when she first viewed the rental unit and negotiated her tenancy. She stated that the Tenant had told the Landlord that she had a lot of Christmas decorations and stuff that needed to be kept in a storage room at which time the Landlords discussed the Tenant having the storage area under the deck once the Landlord did some work to the area. During this first meeting the Tenant told the Landlords she had the two older cats and that they were indoor cats. The Landlords said they were okay with her keeping her cats.

The Witness advised the Tenant called her very upset after the Landlords told her on May 4, 2011 that she would have to move out by the end of May 2011. They have been best friends for many years and she could tell the Tenant was very shaken up about this. She experienced the harassment when she went to visit the Tenant and she too was yelled at and sworn at by the female Landlord.

The Witness confirmed she was with the Tenant on either Tuesday or Wednesday (June 21st or June 22) when they went back to the rental unit to serve the Landlords with the Tenant's evidence. They knocked on the Tenant's old door and the male Landlord came to the door and appeared to have just woken up. She looked inside the unit and all of the Landlord's possessions were in the unit and they had some outside on the balcony area. The Landlord closed the door quickly and as he said he had to talk to his wife.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, written statements from each party, copies of notes written between the parties, a copy of the Tenant's notice that she would be vacating the property June 17, 2011, a 10 Day Notice and a 1 Month Notice to end tenancy.

A significant factor in my considerations is the credibility of the testimony provided during today's hearing. I am required to consider the evidence not on the basis of whether the testimony "carried the conviction of the truth", but rather to assess the evidence against its consistency with the probabilities that surround the preponderance of the conditions before me.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

I accept the Tenant's testimony, which was supported by her Witness that her rent of \$720.00 per month included access to a storage facility and when the storage facility was not made available to her she had to keep her items stored in the second bedroom.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

In this case I find that the Tenant is entitled to nominal damages for not having access to storage and I award the Tenant **\$250.00** (5 months x \$50.00 per month).

The evidence supports the Tenant's security deposit was returned to her May 20, 2011. I do not accept the Landlord's testimony that they returned the Tenant's security deposit

on May 20, 2011 because she requested it. I accept the that the security deposit was returned because the Landlords were demanding she move out by May 31, 2011 as they intended to move their family into her unit. Furthermore I accept the Witness' testimony that when they attended the unit on approximately June 21, 2011 the Landlords and their furniture were occupying the Tenant's former rental unit.

After careful consideration of the testimony and evidence I find there to be sufficient evidence to prove the Landlords occupied the Tenant's rental property without providing the Tenant with the proper 2 Month Notice to End Tenancy which is a breach of section 49 of the Act. Furthermore I accept the Tenant and her guests were harassed as the Tenant informed the Landlords of her rights and as she continued to occupy the rental unit.

Based on the aforementioned I find the Tenant was entitled to compensation pursuant to section 51(1) of the Act, of one month's rent for having to vacate the property for Landlords' use. This compensation has been provided in the form of June's rent that was not paid by the Tenant as the Tenant occupied the unit from June 1 to 17, 2011.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

Policy Guideline 16 states that in addition to other damages an Arbitrator may award aggravated damages. These damages are an award of compensatory damages for non-pecuniary losses and are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

I make note that the verbal notice was given to the Tenant on May 4, 2011, she occupied the unit until June 17, 2011, and the situation began to escalate as the Landlords found out the Tenant had not found another place to live and would not be out by May 31, 2011. I accept the Tenant's evidence and testimony that the Landlords

swore, yelled and harassed her and her guests which causing her to have no peace as she continued to occupy the rental unit into the month of June, 2011.

Based on the aforementioned I find the Landlords' actions of summarily evicting the Tenant by means of verbal notice and harassment to be deliberate and wilful acts that are an egregious violation of the *Residential Tenancy Act*, and I hereby award the Tenant **\$720.00**.

The remainder of the Tenant's claim is \$448.00 (\$40.00 + \$48.00 + \$360.00) for labour charges to clean the unit and install light covers and electric outlet covers. The evidence supports the Tenant did not have an agreement with the Landlords for them to cover these costs. Therefore I find there is insufficient evidence to support the Landlords breached the Act in relation to the costs of labour claimed. Based on the aforementioned I dismiss the Tenant's claim of \$448.00 for labour, without leave to reapply.

The Tenant has primarily been successful with her application, therefore I award recovery of the **\$50.00** filing fee.

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order in the amount of **\$1,020.00** (\$250.00 + \$720.00 + \$50.00). This Order is legally binding and must be served upon the Landlords by the Tenant.

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 04, 2011.

Residential Tenancy Branch