

DECISION

Dispute Codes: CNC, MNDC; OLC; FF

Introduction

This hearing dealt with the Tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice); for an Order that the Landlord comply with the Act, regulation or tenancy agreement; for compensation for damage or loss under the Act, regulation or tenancy agreement; and recovery of the filing fee.

Both parties appeared at the hearing, gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that:

- the Landlord received the Notice of Hearing documents on June 19, 2011;
- the Landlord received copies of the Tenant's documentary evidence on July 21, 2011; and
- the Tenant received copies of the Landlord's first documentary evidence package on July 21, 2011, and a second package on July 25, 2011.

Preliminary Matters

At the outset of the Hearing, it was determined that the tenancy ended by mutual agreement on June 19, 2011. A copy of the Mutual Agreement to End Tenancy was provided in evidence. Therefore the Tenant's applications to cancel the Notice, and for an Order that the Landlord comply with the Act are dismissed. The Hearing continued with respect to the Tenant's application for a monetary award.

The Tenant objected to the inclusion of the Landlord's 2nd package of evidence because it was not provided to him within 5 days of the hearing pursuant to Rule 3 of the Rules of Procedure.

To the extent possible, an applicant should provide a respondent and the Residential Tenancy Branch (the "Branch") with copies of his evidence when the Application for Dispute Resolution is filed, but in any event at least 5 days before the date of the

Hearing. At my discretion, I may allow late service up to at least 2 clear days prior to the date of the Hearing. "At least" excludes the day of service; the day of the Hearing; and any weekend days or statutory holidays in between. The Tenant filed his Application on June 16, 2011, but did not provide the Landlord or the Branch with his evidence package until July 21, 2011, which is only 4 clear days before the date of the Hearing. The Landlord provided documentary evidence in reply to the Tenant's evidence within 2 clear days of the Hearing date. The Tenant's evidence consisted of a binder containing 5 tabs and approximately 60 pages. The Landlord required time to digest the material and provide further documentary evidence in reply. Therefore, I have considered the contents of the Landlord's second evidentiary package in this Decision.

Issue to be Decided

Is the Tenant entitled to compensation pursuant to the provisions of Section 67 of the Act?

Background and Evidence

The Landlord advertised the rental unit on a popular web site. A copy of the ad was provided in evidence. The rental unit is on the ground floor of a building. The upstairs is occupied by the Landlord's other tenants (the "Neighbours"). The Tenant met with the Landlord on May 24, 2011, and a verbal agreement was made to rent the rental unit effective June 1, 2011, for \$750.00 per month. The Tenant paid the Landlord cash for the security deposit, in the amount of \$375.00 and the first month's rent in the amount of \$750.00.

On June 1, 2011, the Landlord met with the Tenant to sign the tenancy agreement. The Tenant noted that the tenancy agreement stipulated that pets were not allowed. The Tenant has a cat.

The Tenant testified that he believes the Landlord and Neighbours were in collusion and were attempting to get rid of him from the beginning of the tenancy. He stated that he believed one of the Neighbours objected to the Tenant having a cat on the premises.

The Landlord testified that it was clear in the on-line ad that no pets were allowed. She stated that the Tenant advised her that he loved the rental unit, but that he loved his cat more and that he would move out.

The Tenant stated that the parties agreed that he would move out in 10 days and that the Tenant would be given a full refund. The Landlord denied this and stated that the Tenant had said he would move out by June 6th. She stated that she and her husband (the landlord TH) went to the rental unit on June 3rd with the cash the Tenant had given her along with a Mutual End of Tenancy Agreement, but the Tenant became angry and aggressive towards TH. The Police were called and attended.

The Landlord testified that she returned \$650.00 to the Tenant on June 19, 2011, representing return of the security deposit and prorated rent.

The Tenant testified that over the course of the tenancy the landlord TH accused him publicly of being a criminal and constantly harassed him.

The Landlord testified that the on-line ad indicated that the rental unit was suitable for single occupancy. The Landlord testified that the Tenant moved his girlfriend into the rental unit and also lied when he said he did not have a criminal record. The Landlord stated that the Tenant and his girlfriend were very noisy which disturbed the Neighbours and kept them awake at night.

The Tenant denied that the woman was his girlfriend or that she had moved in. He stated that she was just a friend and that she was visiting him from out of province.

The Tenant stated that the Landlord made his life a living hell and caused him so much stress that he was unable to finish his schooling and had to drop out. He stated that this was the "most horrific life experience ever". The Tenant seeks compensation as follows:

Tenant's time spent viewing rental unit; corresponding with Landlord, Neighbours and police; and generally dealing with tenancy and Landlord (62.25 hours @\$20.00)	\$1,245.00
Return of balance of June rent for loss of quiet enjoyment	\$475.00
Compensation for cost of bus pass to and from school	\$495.00
Compensation for removal of the Tenant's uninsured vehicle from the rental unit	\$170.00
Recovery of the filing fee for this Application	\$100.00

Aggravated damages for intimidation, humiliation, harassment, slander, obstruction of justice, mental anguish, mental suffering, professional and vocational interference	<u>\$6,000.00</u>
TOTAL CLAIM	\$8,485.00

Analysis

Section 67 of the Act provides that if damage or loss results from a party **breaching the Act, regulations or tenancy agreement**, the director may determine the amount of, and order that party to pay, compensation to the other party. I note that the Tenant seeks compensation for damages that are not contemplated by Section 67 of the Act, with the exception of his claim for loss of peaceful enjoyment.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case the Tenant has the burden of proof based on the civil standard, a balance of probabilities. The Tenant has the burden to prove, among other things, that the Landlord violated the Act, regulation or tenancy agreement.

The Tenant provided a version of events, and the Landlord provided another version of events. I find that the Tenant has not met the onus to prove his claim, as there is insufficient proof of damage or loss due to the Landlord's actions.

I find insufficient evidence that the Landlord violated the Act, regulation or tenancy agreement and therefore the Tenant's application is dismissed.

Conclusion

The Tenant's application is dismissed in its entirety, 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: August 12, 2011.

Residential Tenancy Branch