



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OPT, LAT, MT,
Introduction

This matter was originally scheduled to deal with an application by the tenants to cancel a Notice to End Tenancy cause, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and to recover the filing fee for this application. This hearing was adjourned as the landlord had already made plans to be on vacation at the time. The hearing was rescheduled for today's date. Since the original hearing the tenant has filed another application and seeks more time to cancel another One Month Notice to End Tenancy, seeks authorisation to change the locks to the rental unit, seeks an Order of Possession of the rental unit and seeks to recover her second filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent by registered mail to the landlord on July 30, 2011 and September 10, 2011. The landlord is deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Preliminary Issues

The tenant and landlord inform me at the start of the hearing that another hearing had taken place between the Parties on September 12, 2011. At this hearing the landlord had applied for

an early end to tenancy and was successful gaining an Order of Possession as the tenants had also given written Notice to end their tenancy. This Order of Possession issued at that hearing is effective for September 30, 2011.

Consequently as the tenancy will end on September 30, 2011 I dismiss the tenant's application for more time to cancel the 2nd One Month Notice to End Tenancy, to cancel the Notices to End Tenancy, for an Order of Possession for the tenants, and authorization to change the locks of the rental unit.

This hearing proceeded with the tenants' application for money owed or compensation for damage or loss.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy started on November 05, 2009. This started as a fixed term tenancy for one year and reverted to a month to month tenancy at the end of the fixed term. Rent for this unit is \$767.50 which is due on the last day of each month in advance.

The female tenant testifies that she had another hearing with the landlord on July 13, 2011 where she applied for a monetary order for money owed or compensation for damage or loss. She states at that hearing she testified that she had suffered harassment from the landlord which resulted in the loss of quiet enjoyment of her rental unit. She states the landlord continually put notes and notices on her door and called her about late payments of rent. The tenant testifies the landlord also accused her of smoking marijuana in her unit and asked her to remove three potted plants in her parking bay while other tenants had personal effects stored in their parking bays and were not asked to remove them.

The tenant testifies that since that hearing held in July, 2011 the landlord has continued to put notices on her door and one in her mailbox. The tenant states the landlord has continued to harass her and has libelled and slandered her by telling the assistant manager she took medical marijuana. The tenant states the manager and her assistant sniff around her door, refuses to answer her phone calls and blatantly disregard the *Residential Tenancy Act*.

The tenant testifies that in July she went to the landlords address to serve her with her new hearing package and as the landlord was not home at that time she served her adult daughter residing there. The tenant testifies the landlord and her daughter have written inflammatory letters concerning this service and her demeanour at that time. The tenant states her emotional state of health have nothing to do with the landlord or her daughter.

The tenant testifies that since July, 2011 she has received another One Month Notice to End Tenancy for cause and two other general notices. The tenant states she feels as if they are being singled out and picked on by the landlord in retaliation against them for filing an application for dispute resolution. The tenant now has two Monetary Claims for compensation one totals \$3,000.00 and the other \$500.00.

The landlord testifies the tenants have not been picked on. She states the tenant's application concerning these same issues was dismissed without leave to reapply at the hearing held in July, 2011 and she is attempting to reapply for the same issues. The landlord testifies that she has only served the tenant with one more Notice to End Tenancy and the other notices mentioned by the tenant are generally letters sent to all the tenants. (Provided in evidence) The landlord testifies that all tenants who stored items in their parking bays were sent letters to remove these items as their policy states that these areas are only for the parking of vehicles. The landlord states the tenant is not singled out for these actions or when receiving letters or notices.

The landlord testifies that the tenant would hide her telephone number when she called so these calls would not be answered by the landlord. At other times when the landlord has responded to the tenants telephone calls the tenant simply yells at her so she has since

asked her to put any complaints in writing. If the tenant has an emergency she must call 911. The landlord disputes that she has harassed the tenant since the last hearing and disputes that she has libelled or slandered her by telling her assistant manager she took medical marijuana. The landlord testifies she continues to have a right and obligation to put Notices on the tenant's door as determined at the hearing held in July, 2011. The landlord testifies that the first time she spoke to the female tenant, the tenant told her because of her medical condition she had to take marijuana. The landlord testifies she informed the tenant that if she received any complaints from other tenants she would have to deal with this with her. The landlord testifies she continues to receive complaint letters from other tenants about the smell of marijuana from these tenants unit.

The assistant manager testifies that she was checking outside the suites for marijuana smells and it was strongest coming from these tenants suite. The assistant manager testifies the tenant herself told her that she had marijuana pills but she did not have to take them. The assistant manager testifies the landlord never told her the tenant took medical marijuana.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for money owed or compensation for damage or loss under the *Act*, the tenants seek to recover a total amount of compensation from the landlord for a loss of quite enjoyment of their rental unit of \$3,500.00. Having considered the tenants claim in this matter I refer to the previous decision issued on July 13, 2011 which determined that the landlord is entitled to serve notices to end a tenancy and the tenant's recourse would be to dispute these notices. It also states it does not constitute harassment by the landlord.

The tenant argues that since that hearing the landlord has continued to harass her, libel her and make slanderous remarks about her; however the tenant has provided no evidence to support this claim and I find the additional Notice and letters given to the tenant fall under the landlords' obligations as a landlord.

The tenant argues that the letters provided by the landlord from herself and her daughter and inflammatory towards her. I have considered the wording in these letters and find the letter from the landlords' daughter has been written in a factual manner according to the observations of the landlords' daughter at the time. The other letter from the landlord cannot be considered slanderous or inflammatory as it is the landlords' response to the tenant having served a notice to her daughter.

Consequently, I find that the principle of res judicata applies in this matter, meaning that the matter has already been decided and is therefore final and binding on the parties. I do not have the authority to over-rule or make an alternate finding in regards to the determination made in the previous decision and find no evidence to support any new or different complaints from the tenant that would constitute harassment in breach of the covenant of quiet enjoyment by the landlord. Therefore the tenant's applications are dismissed without leave to reapply.

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: September 29, 2011.

Residential Tenancy Branch