



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, AAT

Introduction

This hearing dealt with the Tenant's Application, requesting a monetary order in the amount of \$16,800.00, and an order allowing the Tenant access to the rental unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Is the Tenant entitled to an order allowing access to the rental unit?

Background and Evidence

The Tenant is alleging that the rental unit below has been stealing electricity from her rental unit on and off for several months. The Tenant alleges that some months, when her bill was higher than normal, the renters below must have stolen electricity from the subject rental unit.

The Tenant testified that she asked the hydro company to investigate this. She testified that the hydro company did an inspection at the exterior of the rental units and did not find that the unit below was taking her electricity. The Tenant also alleges she has had the police investigate these claims.

The Tenant alleges that the hydro company could not gain access to the interior of the rental unit below to investigate if the theft was from inside, as the Landlord refused to

allow the hydro company to enter. The Tenant testified she did not recall giving the contact information of the Landlord to the company. The Tenant testified she was not sure if the hydro company tried to contact the Landlord. She believes that if the electric company did not investigate the inside of the buildings it is because the Landlord must have denied them access.

The Tenant has submitted her hydro bills. These indicate unpaid balances accumulating for several months, as she made partial payments on some of the bills. At the end of August there was a balance due to the hydro company of \$1,153.27 and following this, the account was cancelled in early September.

The Tenant complains that following the cut off of power, the Landlord refused to change the electricity into the name of the Landlord from the Tenant and have it reconnected.

The Tenant further claims that she and her son have been deprived of quiet enjoyment of the rental unit because of the criminal activity in the rental unit below. She testified that the police have attended there several times with a police dog. When they are there with the police dog, her son was not able to go out and play. The Tenant testified she had not written to the Landlord to complain about these ongoing disturbances, as she did not know she had to.

The Tenant alleges that the Landlord did nothing to evict the renters in the unit below her, and had issued and withdrawn several Notices to End tenancy to the renters below.

The Tenant is also claiming for the cost of moving from the rental unit. She testified that someone from the Ministry of children told her to move out because her rental unit was not safe. She testified that this person told her this in person and there was no written evidence of this conversation.

In reply, the Landlord has submitted evidence that the Tenant had failed to pay several hydro bills and it was cut off to the rental unit. The Landlord gave the Tenant a 10 day Notice to End Tenancy for unpaid utilities. The Tenant did not dispute this Notice by filing an Application.

The Tenant and her child left the rental unit at the end of September, after spending nearly a month in the rental unit without electricity. The Agent for the Landlord had cautioned the Tenant that it was unsafe for her and her child to live in the rental unit without electricity. She warned the Tenant she might contact the Ministry because of the unsafe conditions.

The Landlord also provided evidence that the Tenant's rent had been lowered by \$50.00 per month in April of 2011, in order to help her financially.

The Agent for the Landlord testified that all the units in the complex had separate electrical meters. The Agent has talked with the electrical company several times and testified she was never asked if the electrical company could investigate the interior of the rental unit below the Tenant's unit. She denies refusing the company access. She testified that she allowed the electrical company to investigate the exterior of the building and would have allowed them access to the interior had she been asked.

The Landlord also submitted that the Tenant has no actual knowledge of what Notices to End tenancy may have been given to other renters in the residential complex.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the claims of the Tenant must be dismissed without leave to reapply.

The Tenant had the obligation of proving the claims that have been made against the Landlord. The standard of proof required is the civil and administrative law standard, which is, claims must be proven on a balance of probabilities.

Proving a claim for monetary damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed, and proof that the party took all reasonable measures to mitigate their loss.

There are many reasons why an electrical bill might fluctuate from month to month. Usage varies depending on the time of year if the rental unit is electrically heated. In winter electrically heating a rental unit will cost more than in summer. During the summer months when the weather is warm and it is brighter outside people commonly use less electricity for heat and lighting. Around the December holiday season people may be plugging in extra lights for decoration and this would result in a higher bill.

I find that in this case the Tenant has insufficient evidence to prove that the fluctuations in her bills are due to someone in another rental unit stealing her electricity.

I also find the Tenant has failed to prove she has lost any quiet enjoyment of the rental unit due to a breach of the *Act* or tenancy agreement by the Landlord. The Tenant provided no proof that the Landlord breached the *Act* or tenancy agreement.

I also find that the Tenant is not entitled to any moving costs. The Tenant left the rental unit at the end of September since the electrical service was cut off by the hydro company due to the account being in arrears. The fact the Tenant failed to pay all of her hydro bills and had to leave the rental unit is not the fault of the Landlord.

I also find there is insufficient evidence from the Tenant to prove anyone told her to move out of the rental unit because it was unsafe. There was certainly no direct evidence from the Tenant that the unit was unsafe, aside from not having electrical service.

Therefore, I dismiss all the claims of the Tenant in this Application, without leave to reapply.

This decision is final and binding on the parties, except as provided under the Act, and 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: November 23, 2011.

Residential Tenancy Branch