



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF, O

Introduction

This matter dealt with an application by the Tenant for compensation for loss or damage under the Act, regulations or tenancy agreement, to have the Landlord comply with the Act, to recover the filing fee for this proceeding and for other considerations.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on October 20, 2011. Based on the evidence of the Tenant and the Landlord, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is there loss or damage to the Tenant and if so how much?
2. Is the Tenant entitled to monetary compensation and if so how much?
3. Has the Landlord complied with the Act?
4. What other considerations are there?

Background and Evidence

There was contradictory testimony given by the Tenant and the Landlord on the conference call. The Tenant said the Landlord did not meet their responsibilities as a landlord. The Tenant said the Landlord did not repair the unit when requested to and as a result the Tenant felt unsafe and she did not feel secure in the unit. The Tenant said the lock on the front door was difficult to make work, the sliding door in the living room did not lock or slide well, there were electrical issues in the unit and the laundry leaked water. As a result the Tenant said she met with the Landlord on March 11, 2011, after voicing her concerns many time about the repairs that were need to be done. The Tenant told the Landlord at that meeting that she was terminating the tenancy. Following the meeting the Tenant said she gave the Landlord written notice in a letter dated March 13, 2011, in which she said she was moving out of the unit on May 1, 2011. The reason the Tenant gave in the letter was due to circumstances beyond her control. The Tenant continued to say in the letter that she believed a pedophile lived in the rental complex and that made her feel unsafe for herself and her daughter. The

Tenant said she understood she was breaking her tenancy agreement before the end of the fixed term. The Tenant said she talked to the Landlord about the consequences of moving out of the unit early. The Tenant said she understood the Landlord would try to rent the unit and when it was rented she would no longer be responsible for the rent. The Tenant said she knew she was responsible for the rent until the unit was rent to new tenants. The unit was rent August 1, 2011 and the Tenant was found to be responsible for the rent for May, June and July, 2011 in the amount of \$2,175.00 and liquidated damages of \$362.50 in a Residential Tenancy Branch hearing conducted on August 24, 2011. The Tenant continued to say that she disagrees in the previous RTB decision as the Tenant believes the Landlord did not try to rent the unit and therefore the Landlord did not mitigate their losses as required to do by section 7(2) of the Act. Consequently the Tenant is requesting damages equal to the three months rent awarded to the Landlord in the amount of \$2,175.00, her security deposit of \$362.50 returned and the filing fee for the previous hearing of \$50.00 as well as the filing fee for this hearing of \$50.00.

The Tenant continued to say because the Landlord did not do the repairs to the rental unit she felt unsafe in the unit and she believes that was grounds to end the tenancy early.

The Landlord said the rental unit was in good condition as the unit was renovated in September, 2010 and the move in condition inspection report shows the unit to be in good condition. The Tenant said the Landlord left the report with her to complete it and she made some notes on it specifically that the front door lock needed to be replaced, parts of the unit were not clean, there was water damage in the kitchen and one electrical outlet was not working. There is nothing written in the section "repairs to be completed at the start of the tenancy" and the Tenant and the Landlord both accepted and signed the report.

The Landlord continued to say the move out condition inspection report was completed on May 1, 2011. Both parties agreed the unit was left in good condition, but the Tenant did not agree to give the Landlord her security deposit as liquidated damages for moving out before the end of the fixed term of the tenancy. As a result the Tenant did not sign the move out report. The Landlord said they made an offer to the Tenant that if she would surrender her security deposit of \$362.50 as liquidated damages they would not pursue her for additional rent charges after May 1, 2011. The Landlord said the Tenant declined their offer and requested her security deposit to be returned. Consequently the Landlord said they applied to the Residential Tenancy Branch for compensation for lost rent and liquidated damages. The Landlord said they were successful and they did not understand why the case is being heard again. I explained to the Landlord this is a different application from their application that was heard August 24, 2011. Tenant has applied for loss or damage to her.

In closing the Landlord said the Tenant broke a fixed term tenancy agreement because the Tenant thought there was a pedophile living in the building as stated in her letter dated March 13, 2011, not because of any repair issues. As well the Landlord said they

did their best to connect the Tenant with the repair man, but it was difficult to do and it resulted in the repairs being done on April 4, 2011. The Landlord said they believe they have acted responsibly.

The Tenant closed her remarks by saying she moved out of the rental unit because the Landlord did not make emergency repairs to the unit and as a result she felt unsafe living in the unit. The Tenant was asked if she made an application to the Residential Tenancy Branch to get the repairs done by the Landlord or to end the tenancy for breach of a material term of the tenancy agreement. The Tenant said she did not understand the law so "no" she did not make any applications prior to this application.

Analysis

In order for an applicant to be successful with a monetary claim the applicant must prove a loss actually existed, the loss or damage was solely because of actions or neglect of the respondent in violation of the Act or the agreement, the loss or damage must be verified and there must be proof that the applicant took steps to mitigate or minimize the loss or damage.

In this case the Tenant is saying that the award from the Residential Tenancy Branch hearing of August 24, 2011 in the amount of \$2,225.00 is the loss that she has experienced. To establish grounds to prove that a loss actually exists the Tenant must prove that she was not responsible for the rent for May, June and July, 2011 in the amount of \$2,175.00 and the liquidated damages of \$362.50. Both these amounts are a result of the Tenant moving out of the unit prior to the end of the fixed term of the tenancy agreement. The Tenant said she understood and signed the tenancy agreement dated December 6, 2010 and the tenancy agreement clearly states the contract is for a fixed term with an expiry date of December 31, 2011. As well the tenancy agreement says if the Tenant moved out before the end of the original term of the tenancy agreement the Tenant will pay the Landlord liquidated damages in the amount of \$362.50. **Section 45(2)(b) of the Act says tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement as the end of the tenancy.** This provision may be changed if the Landlord and Tenant have a Mutual Agreement to End the Tenancy or if either party has an order from the Residential Tenancy Branch to end the tenancy. The Tenant did not accept the Landlord's offer to mutually end the tenancy and the Tenant did not apply to end the tenancy so the Tenant does not have an order from the Residential Tenancy Branch to end the tenancy. The Tenant's contention that she did not understand the law is unfortunate, but it does not

constitute grounds to prove she was not responsible for the unpaid rent and liquidated damages. Consequently I find the Tenant has not established grounds to prove there is a loss as it was the Tenant's responsibility to pay the rent for May, June and July, 2011 and for the liquidated damages in the tenancy agreement, which are a reasonable amount to reflect re-renting costs.

I find the Tenant has not established grounds to support her monetary claim as no loss or damage is actually proven. The Tenant's application is dismissed without leave to reapply.

As the Tenant has been unsuccessful in this matter I order the Tenant to bear the \$50.00 cost of this application which she has already paid.

Conclusion

The Tenant's application is dismissed 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*.

Residential Tenancy Branch