



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, PSF, RPP, LRE, LAT

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy, for compensation for loss or damage under the Act, regulations or tenancy agreement, to have the Landlord comply with the Act, for the landlord to provide services and facilities, for the landlord to return personal property and to allow the tenant to change the locks on the door of the rental unit.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on January 16, 2012. Based on the evidence of the Tenants and the Landlord, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

At the start of the conference call the female Tenant said they had moved out of the rental unit so their application to cancel the Notice to End Tenancy, to make the landlord comply with the Act, regulations or tenancy agreement, to set conditions on the landlord and to change the locks in the rental unit are withdrawn as they are no longer relevant.

Issues(s) to be Decided

1. Is there loss or damage to the Tenants and if so how much?
2. Are the Tenants entitled to monetary compensation and if so how much?
3. Does the Landlord have the Tenants’ personal property and if so are the Tenants entitled to the return of that property?

Background and Evidence

The Landlord said he serviced the Tenants with a 10 Day Notice to End Tenancy dated January 15, 2012 for \$200.00 in unpaid rent. The Landlord continued to say that the Tenants moved into two separate rooms at the rental complex on the same day, October 1, 2011. As a result the Landlord said there was a separate verbal tenancy agreement for each of the applicants. Following this the male Tenant was unable to pay his rent so he moved into the female Tenant’s RV that was parked in the rental complex

parking lot. The Landlord said he agreed to this and charged \$275.00 rent to cover the cost of utilities and use of facilities in the rental complex. The Landlord said this included the use of the bathroom and kitchen in the rental complex. When the male Tenant did not pay his full rent for January, 2012, the Landlord issued the 10 Day Notice for Unpaid rent or utilities in both the male and female Tenants' names. The Landlord said the rent has not been paid and he has not made an application to the Residential Tenancy Branch.

The female Tenant said that they have moved out of the rental unit so their claim is reduced to a monetary claim against the Landlord for having her RV towed to an impound lot, which the female Tenant estimates the cost to get the RV back will be approximately \$500.00. As well the female Tenant is claiming \$680.00 for moving cost because the Landlord forced her to move out of the rental unit. The female Tenant said this was the actual cost of the movers, but she did not submit this bill into evidence. In addition the female Tenant said they lost food, but the Tenants did not know the amount and she did not have the food itemized or receipts to show how much food was lost.

The male Tenant said the second part of their claim is for the return of their personal property including the RV and their belongings in the RV. The Tenants' said that the Landlord towed the RV to force them to move out of the rental unit.

The Landlord said he had the RV towed because it was not registered and there was no insurance on it so he said it was an abandoned vehicle and the law states that abandoned vehicles are to be towed to an impound lot until the owner can register and insure the vehicle. The Landlord called the tow truck owner/operator to testify as a Witness. The Witness M.M. the tow truck owner/operator said he was the son of the Landlord and that he towed the RV to his impound lot in accordance to city bylaws. The Witness M.M. said the Tenants could come to the impound lot at any time when the lot is open and retrieve their personal property from inside the RV, but he would need proof of ownership and insurance as well as payment for the towing and storage to release the RV from the impound lot in accordance with the city bylaws.

The Landlord continued to say he had two additional witnesses that would testify that the Landlord acted responsibly in this tenancy. The first Witness J.B. testified that she saw conflict between the Landlord and the Tenants, but she said the Landlord did not harass the Tenants. The second Witness C.F. said the Landlord called the police when he was going to tow the RV away and the police said it was in accordance with city bylaws. As well Witness C.F. said the electrical issues in the rental unit were caused by the breaker going off due to the RV tripping the breaker and she removed the carport light because the Tenants were not turning it off.

The Tenant said the Landlord was trying to force them out of the unit by towing their RV, away in the night, locking the male Tenant out of the rental complex, turning lights off, closing the kitchen and laundry and stopping the cable TV and internet. The female Tenant said they are claiming \$500.00 which is an estimate to get her RV back from the impound lot, \$250.00 for the towing charges and \$250.00 for storage at \$20.00 per day,

In addition the female Tenant said she is claiming her moving expenses in the amount of \$680.00, which she has paid, but she did not submit an invoice or receipt for. Further the female Tenant said they lost food because of the Landlord's actions, but she did not know how much or how to put a value on it. As well, the female Tenant said she was making arrangements to have the RV moved from the rental complex and although it did not have registration and insurance the Landlord knew it was her RV and it was not an abandon vehicle. The female Tenant said the Landlord had agreed to let the male Tenant live in the RV for \$275.00 per month.

In closing the Landlord said the Tenants did not pay their rent so he issued a Notice to End Tenancy. The Landlord continued to say he has not harassed the Tenants and he towed the RV away because it had no registration and insurance therefore he said it was an abandon vehicle and city bylaws state abandon vehicles can be towed to an impound lot. The Landlord said he has not harassed the Tenants and they have no claim against him.

The Tenant closed her remarks by saying she moved out of the rental unit because the Landlord forced them to by towing the RV away. This took the male Tenant's home away and left them no choice but to move. The female Tenant said this is not right and the Landlord should be liable for the return of the RV and the moving costs that the Tenants' have incurred.

Analysis

It should be noted that although the request to cancel the Notice to End Tenancy was withdrawn the Landlord put both Tenants on one 10 Day Notice to End Tenancy for unpaid rent. This is incorrect as the Landlord said there was two tenancies; therefore two Notices to End Tenancy would be required to end both tenancies. Consequently the Landlord's Notice to End Tenancy is invalid and the Tenants' request to cancel the Notice would have been upheld if they did not cancel that request. This should be noted, but it is not material to the amended application.

There was much contradictory testimony given by the Tenants and the Landlord on the conference call. Both parties gave affirmed testimony and there was no corroborating evidence by way of receipts or invoices provided by the Tenants to support their monetary claims. 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 caused 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 Tenants are saying that the Landlord should be responsible for their moving expenses of \$680.00. The Tenants have not proven they actually paid this amount by providing a receipt for the moving costs and the cost of moving from one tenancy to another is not the responsibility of a Landlord when the reason for the move is unpaid rent. In this situation the female Tenant had paid all her rent, but she chose to move out of the rental unit instead of waiting to dispute the Notice to End Tenancy with her application dated January 9, 2011. Consequently I find the Tenants have not established grounds to be awarded the moving expenses that they are claiming due to lack of evidence and that she chose to move out of the rental unit. I dismiss the moving expenses of \$680.00 with leave to reapply.

Further with regard to the claim involving the RV the Landlord and the Tenants may have made an arrangement about the male Tenant living in the RV, but it is not a tenancy agreement between the male Tenant and the Landlord as the RV was owned by the female Tenant; therefore the tenancy agreement if there was one would have been a sublease between the female Tenant and the male Tenant. The Landlord's tenancy agreement with the male Tenant ended when he did not move into the room in the rental complex or when he moved out of the room originally rented to him.

Consequently the issue of the monetary claim for the RV expenses is between the female Tenant and the Landlord as the Landlord seized the personal assets of a Tenant whose tenancy was in good standing. Although the female Tenant may have a valid claim against the Landlord for costs associated with towing the RV, the female Tenant has not proven the actual costs or loss because she has not paid the bills to get the RV returned. When the Tenant has paid the bills associated with the return of the RV the female Tenant may have a valid claim against the Landlord, but until that time the female Tenant has not proven a loss actually exists and if the loss is solely caused by the Landlord in violation of the Act, regulations or tenancy agreement. As a result I find the female Tenant has not established grounds at this time to be awarded the monetary claim of \$500.00 for the expenses involved with the return of the RV and I dismiss this claim with leave to reapply.

With respect to the Tenants claim for the return of their personal property in the RV, the Witness M.M. who is holding the RV said the Tenants can come to the impound lot and retrieve their personal property that is inside the RV any time that the impound lot is open.

I find the Tenants have not established grounds to support their application and monetary claims at this time as no loss or damage was actually proven. The Tenants' application is dismissed with 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 they have already paid.

Conclusion

The Tenant's application is dismissed with 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