



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, O, FF
 MNDC, O, FF

Introduction

This hearing dealt with cross applications by the tenant and landlord. The application by the landlord is for money owed or compensation due to damage or loss, other and recovery of the filing fee. The application by the tenant is for return of the security deposit, money owed or compensation due to damage or loss, other and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

This tenancy began August 1, 2011 with monthly rent of \$900.00 and the tenant paid a security deposit of \$450.00

On February 18, 2012 the landlord and tenant signed a Mutual Agreement to End Tenancy effective February 29, 2012.

At the start of the hearing it was confirmed that the tenant has vacated the rental unit and no longer requires a rent reduction for repairs or for the landlord to comply with the Act, therefore these portions of the tenant's application are dismissed.

The tenant testified that during her tenancy she was constantly harassed by the landlord and the landlord's family to the point where she had to call the police for fear of her safety. The tenant stated that the landlord's family was very noisy and any time the tenant asked them to be quieter they would purposely make more noise by stomping on the floor or turning up their music. The tenant stated that the landlord's son became very threatening towards her and on one occasion chased her in his car. The tenant stated that various members of the landlord's family would yell and curse at the tenant.

The tenant stated that she tried numerous times to talk to the landlord about the on-going noise problem but that the landlord would tell the tenant if she didn't like to go live somewhere else. The landlord responded by stating that the tenant's claim was absolutely false and it was the tenant who was often very noisy. The landlord maintained that any noise generated from their unit was simply minimal noise from people walking on the floor.

The tenant testified that the noise and disruption happened on a daily basis and confirmed that she had documented 6 instances of the noise disruption.

The landlord testified that the tenant was not being truthful and it was the landlord's family that was in fear for their safety. The landlord stated that it got to the point where she had to tell her son to not come home until the tenant had left in her car. The landlord also stated that the tenant's male friend was very aggressive and threatening towards the landlord's family. The landlord stated that the tenant and her male friend would yell and curse at the landlord's family.

The tenant stated that the landlord had provided a designated parking spot and when the landlord's family started to utilize the parking spot the landlord's son became very threatening and aggressive. The landlord countered the tenant's accusation by stating that it was the tenant who had become very threatening and aggressive and the landlord's family became fearful of the tenant. Both side accused the other of purposely blocking to the parking spot.

Both parties testified that they have called the police to attend in response to the other threatening behaviour.

The tenant stated that the landlord refused to complete a move out inspection with the tenant when she vacated and then refused to answer the door to accept the keys back. The tenant then felt compelled to call the police to make the landlord open the door. The landlord responded by stating that because there was a hearing coming up they did not know if they could legally take possession of the rental unit and were trying to avoid more conflict with the tenant.

The landlord testified that the tenant had tricked them into signing the Mutual Agreement to End Tenancy as the tenant had already make an application through this office to sue the landlord for compensation. The landlord stated that because of the tenant's actions they are seeking compensation for the March 2012 rent.

Throughout the hearing the parties continually accused the other of being untruthful and of being the source of all the problems that developed.

Testimony from the tenant's male friend was not taken as the tenant acknowledged that it would simply be a repeat of the tenant's testimony which directly conflicts with the landlord's testimony.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds for entitlement to a monetary order for money owed or compensation due to damage or loss in relation to the March 2012 rent. The landlord and tenant signed a Mutual Agreement to End Tenancy with an effective end of tenancy date of February 29, 2012. The fact that the tenant had filed for dispute resolution in relation to this tenancy has no bearing on the validity of the agreement. Therefore the landlord application is dismissed without leave to reapply.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to a monetary order for money owed or compensation due to damage or loss in relation to the disturbance of the tenant's peace and quiet enjoyment.

It is apparent that the parties have an extremely contentious relationship and with the directly conflicting testimony of the parties, it is impossible to determine where the balance of truth lies. It is recognized that the tenant may have suffered some level of disruption during the tenancy but it is unclear as to how much the tenant's own actions created or in some instances, escalated the situations described. Case in point is when the tenant called the police to attend because the landlord would not answer the door when the tenant was returning the keys to the rental unit. Therefore the tenant's claim for \$1500.00 compensation is dismissed without leave to reapply.

In regards to the tenant's application for return of the security deposit, the landlord was provided the tenant's forwarding address on February 29, 2012. Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing. The 15 day time period has not passed as of the date of this hearing, therefore I will remain silent on this portion of the tenant's application.

As the tenant did not pay a filing fee, the tenant is not entitled to recovery of the \$50.00 filing fee.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

The tenant's application is dismissed in its entirety without leave to reapply with exception of return of the security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Act*.

Dated: March 8, 2012

Residential Tenancy Branch