



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, CNR, MNDC, OLC, LRE, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on May 7, 2012 for:

1. An Order cancelling a Notice to End Tenancy – Section 46;
2. A Monetary Order for compensation or loss - Section 67;
3. An Order for the Landlord to comply with the Act - Section 62;
4. An Order suspending or setting conditions on the landlord's right to enter the rental unit – Section 70; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on May 12, 2012 for:

1. An Order of Possession - Section 55;
2. An Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

During the Hearing, the Landlord stated that the Tenant has already moved out of the unit and that an Order of Possession is no longer required.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to an Order that the Landlord comply with the act or to restrict the Landlord's right to enter the unit?

Background and Evidence

The tenancy began on February 12, 2012. Rent in the amount of \$1,800.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$900.00. The Tenant paid \$900.00 for each of April and May 2012 rent.

The Landlord states that the Tenant failed to pay half the rent for April and May 2012 and claims \$1,800.00. The Tenant states that his co-tenant moved out of the unit at the end of March and that the Landlord agreed to reduce the Tenant's rent for April and May 2012 to give the Tenant time to find another co-tenant. The Landlord does not dispute that the Tenant's rent was reduced for these months but states that the rent was only reduced on a temporary basis and that the Landlord expected that the Tenant would make up the rent at a later date. The Landlord states that he believes that he told the Tenant that he did expect full payment at a later date. The Landlord also states that he informed the Tenant at the time of the reduction that the Landlord would not evict the Tenant while the Tenant was looking for another co-tenant.

The Tenant states that on April 30, 2012, the Landlord repeatedly called the Tenant while the Tenant was at work. The Tenant states that the Landlord was very belligerent and drunk and told the Tenant to be out of the unit within a day. The Tenant states that he was so disturbed by the calls that his boss went and spoke to the Landlord. The Tenant states that when his boss returned, he told the Tenant that all was okay and that the Landlord had calmed down. The Tenant states however that upon getting home that evening, he discovered that the Landlord has left 15 messages and that in those messages the Landlord told the Tenant that a 3rd party, currently living with the Landlord

would be moving into the unit with the Tenant. The Tenant states that this 3rd party was known to the Tenant as a disruptive person that the Landlord has earlier told the Tenant was being evicted. The Tenant states that this 3rd party had terrified his 10 year old son previously and that there was no way that this person could live with the Tenant. The Tenant states that on this date, the Landlord also threatened his son's life by telling the Tenant that his son would be harmed if seen at the unit. This caused the Tenant great fear as prior to this date there had been no problem with his son and that the Landlord liked his son. The Tenant states that he was so concerned about the Landlord's behaviour that he called the police the next morning.

The Tenant states that when the police spoke with both he and the Landlord that they reached an agreement that his rent would not be reduced for June 2012. The Tenant states that he was going to vacate the unit on April 29, 2011 due to his concern about the Landlord's behaviour on that date but that after the meeting with the police, he believed that the matter had been resolved.

The Landlord does not deny the calls to the Tenant, the messages left, the discussion with the Tenant's boss or that the police spoke with him and the Tenant the next day. The Landlord denies that he harassed or threatened the Tenant or told the Tenant to leave the unit in one day. The Landlord states that the Tenant had led him to believe that another co-tenant was going to move in but that the Tenant's boss told him that this would not happen. The Landlord states that he became extremely frustrated when it appeared that the Tenant was not looking for another co-tenant and that as a retired person, the Landlord depended on the rental income. The Landlord agrees that he strongly suggested that the Tenant take the 3rd party as a co-tenant.

The Tenant states that during the first week of May 2012, friends or guests of the Landlord frequently came and used the deck to sunbath. The Tenant states that on one occasion, one of these persons was sunbathing on the deck in his underwear and was looking into the Tenant's windows. The Tenant states that during this week the Landlord also started making the harassing phone calls again. At this point, the Tenant

states that he left the unit to stay with a parent and has now moved out of the unit. The Tenant states that because he has moved out, he no longer requires any compliance by or conditions set on the Landlord as contained in the application. The quantum of the Tenant's claim as contained in the application is \$1,500.00 and it is noted that although the Tenant submitted an itemized monetary statement showing a total monetary claim of \$3,212.09, the Tenant did not request an amendment to its claim at any point during the Hearing.

The Landlord states that the deck is a common area with two separate patio seatings that anyone can use.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment, including a right to reasonable privacy and freedom from unreasonable disturbance. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred or established.

As the Landlord did not dispute that on April 30, 2012, he made repeated calls to the Tenant at work and at home and that the Tenant's boss intervened, I find the Tenant's evidence of the Landlord's behavior to be believable and that the Landlord harassed and frightened the Tenant on this occasion. This also supports the Tenant's evidence that the Landlord began to make more calls during the first week of May 2012. Noting that the Landlord did not dispute that persons were coming onto the deck to sunbath in underwear, I find that the Tenant has substantiated that the Landlord also continued to harass the Tenant by allowing these persons access to the deck. I accept that the Landlord's behavior caused the Tenant to move out of the unit, thereby losing enjoyment of the unit. Accordingly, I find that the Tenant has substantiated a loss of the unit for a period of three weeks and is entitled to **\$675.00**. This amount is determined on a pro rated portion of the \$900.00 rent that was paid for May 2012.

Considering that moving and next tenancy security deposit costs would be payable by the Tenant in any event at the end of an existing tenancy, I find that the Tenant has only substantiated costs in relation to the storage of his belongings in the amount of **\$117.39** and a nominal entitlement of **\$200.00** in relation to the inconvenience of an unscheduled move. As the tenancy has ended, I dismiss the Tenant's claims in relation to the Landlord's compliance with the Act and in relation to setting conditions on the Landlord's access to the unit. As the Tenant has been successful with his claim, I find that the Tenant is entitled to recovery of the **\$50.00** fine for a total entitlement of **\$1,042.39**.

Given the undisputed evidence that the rent was reduced for April and May 2012 and considering that there is no written agreement on any repayment of the reduced amount, I find that the Landlord has no substantiated on a balance of probabilities that the Tenant was required to repay the reduced amount of rent. I therefore dismiss the Landlord's application.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$1,042.39**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: June 1, 2012.

Residential Tenancy Branch