



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on August 1, 2012 although the tenant was able to move into the rental unit on July 29, 2012. This was a fixed term tenancy for one year and the tenancy ended on August 7, 2012. Rent for this unit was \$980.00 per month that was due on the first day of each month.

The tenant testifies that he did not have the lease agreement as the landlord treated the application form as a binding contract. The tenant testifies that the landlord served the tenant an eviction notice on August 5, 2012. The tenant testifies that the landlord said on this notice that the tenant had too many occupants in the rental unit. The notice indicated to the tenant that he had to move out on September 05, 2012. The tenant testifies that he did not file an application to cancel the notice and decided to move from the rental unit on August 7, 2012.

The tenant testifies that he made this decision to move out because the landlord came to his unit on July 31, 2012 and entered the unit without the tenant's permission and started to question the tenant about his personal schedule. Later that evening the landlord came back and at this time the tenant had a friend over to visit. The tenant testifies that the landlord started consistently knocking on his door; the tenant answered the door and was harassed and verbally assaulted by the landlord who was accusing the tenant of running a business from home. The tenant testifies that the landlord swore at the tenant and told the tenant to leave as soon as possible. The tenant testifies that when the landlord came into his unit he started to question the tenant about his decorations, the landlord then asked the tenant for cash for the rent for August even though the tenant had already paid by cheque.

The tenant testifies that the landlord left but then started to call the tenant by phone. The landlord came back again around 9.00 p.m. that evening with his wife and started to knock on the door again however the tenant decided not to open the door. The tenant testifies that around 10 minutes later the tenant left the unit with his friend and the landlord started shouting at the tenant calling him a prostitute. The tenant testifies that the landlord then got into his car and started driving around and continued to call the tenants phone. The tenant testifies that he called the landlord son the next day and told the landlord son that he would not be leaving unless the landlord gave him an eviction notice. The tenant testifies that the next day he got the eviction notice.

The tenant testifies on August 3, 2012 he was in his kitchen and the landlord again came to his unit and started to harass the tenant calling him a liar and telling him to get out of the unit. The tenant testifies he felt so bad living in the unit he decided to move out due to the harassment and mistreatment from the landlord. The tenant testifies that the landlord also mounted a CCTV camera which was pointing at the tenant's door. The tenant testifies that this camera was supposed to monitor the front entrance of the building however the landlord had set it to point at the tenant's front door.

The tenant seeks compensation from the landlord for having to move out of the rental unit. The tenant requests that the landlord is ordered to return the tenants rent for August 2012 of \$980.00 plus an amount to compensate the tenants for having to move. The tenant also seeks to recover his moving fees of \$200.00. The tenant testifies that he had to rent a car to move his belongings from U-Haul and this cost \$40.00. The tenant also seeks the fees to reconnect the electricity for this location and his new location of \$28.00. The tenant also seeks to recover his \$50 filing fee for this application.

The landlord disputes the tenant's claims. The landlord testifies he never asked the tenant to pay cash as all the tenants pay by cheque. The landlord testifies that the tenant was carrying out an illegal business in the unit. The landlord testifies that the tenant told the landlord that the tenant was doing massages and charging clients \$80.00. The landlord testifies that he received complaints from other tenants that lots of people were coming in and out of the tenants unit.

The landlord testifies that he and his son went to the tenants unit and informed the tenant that they had received complaints. The landlord testifies that the tenant told the landlord that he did massage and had a spa business. The landlord testifies that he told the tenant he was not allowed to do business in the unit and he would have to move from the rental unit. The landlord testifies he asked the tenant to show the landlord what was in the unit. When the landlord entered the unit he saw that the tenant's bed was in the living room and another bed was in the bedroom because the tenant was

carrying out massage in the unit. The landlord testifies that the tenant said okay but could the landlord give him a few days and he would move out.

The landlord testifies he went home and told his wife and she wanted to talk to the tenant so they went back to the unit and knocked again however the tenant swore at them and said he would sue them. The landlord testifies the tenant threatened them so they went into their car and drove around the building a couple of times. The landlord testifies the tenant's friend took pictures of them in their car to harass the landlord. The landlord testifies he then gave the tenant a one month notice to end tenancy on August 1, 2012.

The landlord testifies that after the tenant moved out the tenant called the landlord son and asked if he could return to the unit to collect the rest of his belongings. A date and time was arranged and the landlord went to the unit to wait for the tenant. During that period the landlord found some massage perfume in the unit. The landlord testifies that when the tenant was moving out he also saw the tenant's friend with a white bag containing the type of tissue used in massage, to dry the body.

The landlord testifies that he gave the tenant 30 days on the one month notice and the tenant moved out on August 7, 2012. The landlord testifies that he did follow the correct process to evict the tenant but the tenant moved out sooner because he knew he could not conduct his business in the unit.

The tenant disputes the landlord's claim that he did massage in his unit the tenant testifies he was only in the unit for two days and could not have had clients coming in during that time. The tenant agrees that he is a self-employed massage therapist and states that he told the landlord that he worked in Richmond and that he did charge clients \$80.00 for massage. The tenant testifies that his friends only came to visit him to help the tenant move in and setup his unit. The tenant agrees that one friend did stay overnight but it is not illegal to have friends stay. The tenant testifies that the bedroom is used for yoga and meditation and that is why he had his bed in the living room.

The landlord testifies that there is not a camera pointing at the tenants door it is just a metal box for a door closure.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The tenant agrees he was given a one month notice to end tenancy on August 01, 2012. When a landlord serves a tenant with a notice of this nature the tenant has 10 days to respond to this notice by filing an application for Dispute Resolution. The tenant also has recourse against a landlord if the tenant feels a landlord is harassing or intimidating a tenant by filing an application for Dispute Resolution for a loss of quiet enjoyment of his rental unit.

The tenant did not file an application to dispute the Notice or for a loss of quiet enjoyment, rather the tenant decided to move from the rental unit and file an application for compensation at that time. In this matter the tenant has the burden of proof to show that the landlord was harassing the tenant or spoiling the tenant's quiet enjoyment of his rental unit and that the tenant did not move out because he could not conduct his business in the rental unit. The tenant would be required to provide corroborating evidence to meet the burden of proof when one party contradicts the others testimony. In this matter it is a case of one person's word against that of the other and therefore the burden of proof has not been met.

Consequently I must deny the tenants claim for compensation against the landlord. As the tenant has been unsuccessful with his claim I find the tenant must bear the cost of filing his own application.

Conclusion

The tenant's application is dismissed in its entirety 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*.

Dated: October 19, 2012.

Residential Tenancy Branch