



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, ERP, CNR, OLC, RR, MT, MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), for a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to make emergency repairs and repairs, for an order requiring the landlord to comply with the Act, for an order allowing a reduction in rent, and for an order granting more time to make an application to cancel a notice to end tenancy.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue: The tenant said that she has moved out of the rental unit and that most of her personal property has been moved.

As a result, I have amended the tenant's application, excluding her request for orders for the landlord, an order for a reduction in rent and for an order requesting more time to file an application seeking cancellation of a notice to the end the tenancy and an order cancelling that notice.

The hearing proceeded on the tenant's request for monetary compensation.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

This one year, fixed term tenancy began on June 1, 2012, is now ending according to the tenant's testimony, and monthly rent for the rental unit is \$1300.00. The tenant said her portion of the monthly rent is \$650.00

The tenant's monetary claim is \$13,250.00, comprised of moving costs for \$1500.00, the cost of rent in the amount of \$1300.00 per month, for the remainder of the fixed term and the security deposit of \$650.00.

In support of her application, the tenant's evidence included a written summary of her claim and photographs of the rental unit and her personal property.

The parties were previously in dispute resolution, on September 12, 2012, on the co-tenant's application for orders for the landlord, such as was requested in the present application and for a monetary order for \$25,000.00.

In the Decision of September 12, 2012, the arbitrator dismissed the tenants' application due to insufficient evidence. I note that the Decision and application dealt with flooding and damaged property.

In support of her application, the tenant submitted that she is entitled to moving costs due to the major health issues she and her family have suffered as a result of the mould in the rental unit.

Additionally the tenant said that she was forced to move, again due to the compromised health of herself and her daughter from the mould.

The tenant submitted that she and her family's medical issues have been severely exaggerated by the moisture caused by the flood and mould conditions in the rental unit, and were advised to move by their medical professionals.

The tenant contended that she was entitled to rent costs as her new rental unit was more expensive than she could comfortably afford and that she expected to be in the rental unit through the end of the term.

In response, the landlord denied being advised of any health concerns or of the alleged state of the rental unit, until he attended the rental unit of November 2, 2012, to collect the rent. The landlord said that he was advised that day that there was a concern and that the tenant was moving out.

The landlord said that the tenant moved due to having received a 10 Day Notice to End Tenancy for Unpaid Rent and not from the condition of the rental unit.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Moving expenses-The tenant failed to present evidence that she had suffered a loss, such as through a receipt or cancelled cheque, which is step 1 of her burden of proof. I therefore dismiss her monetary claim for \$1500.00, without leave to reapply.

Costs for rent for the balance of the fixed term- I find the tenants submitted insufficient evidence that the landlords' actions caused her to suffer a loss in this regard and I also find the tenant has not presented a basis for making such a claim. I also find that the tenant has not submitted any evidence that she has suffered a financial loss and I therefore dismiss her request for \$1300 per month for the balance of the fixed term, without leave to reapply.

As to the tenant's request for a return of her security deposit, I find this claim is premature as the tenant had not fully moved out of the rental unit as of the day of hearing. I therefore dismiss this request, with leave to reapply.

Conclusion

The portion of the tenant's application for monetary compensation for moving costs and for rent for the balance of the fixed term is dismissed without leave to reapply.

The portion of the tenant's application for a return of her security deposit 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* and is being mailed to both the applicant and the respondent.

Dated: December 17, 2012.

Residential Tenancy Branch