Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT MNDC MNSD FF O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant under the *Residential Tenancy Act* (the "*Act*") for more time to make an application to cancel a Notice to End Tenancy, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for return of all or part of the security deposit, to recover the filing fee, and "other", although details of "other" were not provided that were not already addressed in the above noted application details.

The tenant, the father of the tenant as a witness and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The landlord confirmed that he did not serve evidence on the tenant in response to the tenant's application. The landlord confirmed receiving evidence from the tenant and that he had the opportunity to review the evidence prior to the hearing. I find the landlord was served in accordance with the *Act.*

Preliminary and Procedural Matters

At the outset of the hearing, the tenant requested to withdraw her application for more time to dispute a Notice to End Tenancy as there was no notice related to this tenancy to dispute. The tenant also requested to withdraw her application for "other" as the tenant did not have "other" matters to dispute.

The tenant also requested to amend her monetary claim from $1,100.00 down to $750.00 as the parties agreed that the tenant received her security deposit back from the landlord since filing her application for dispute resolution. As the requested to

reduce her monetary claim does not prejudice the landlord, the tenant's request to amend her claim down to $750.00 was permitted.

Issue to be Decided

- Is the tenant entitled to a monetary order under the *Act,* and if so, in what amount*?*

Background and Evidence

A month to month tenancy began on November 1, 2012, although the tenant stated that she was permitted by the landlord to move in early on October 28, 2012. The landlord disputed the tenant's testimony. The landlord stated that he did not permit the tenant to move into the rental unit early, but did permit her to store some of her personal belongings in the rental unit prior to November 1, 2012.

The tenant is seeking $750.00 as compensation for one month's rent due to the landlord accessing the rental unit "unnoticed" and the landlord's constant complaining regarding a demand to turn off an outside porch light.

The tenant stated that on October 28, 2012 the tenant turned on the outside porch light as it was dark outside and the rental unit is a cabin which is very dark at night. The tenant states that when she returned to the rental unit on October 29, 2012 the light was turned off. The landlord stated that he did enter the rental unit to shut of the porch light as the tenancy had not started yet and there was no reason for the light to be left on.

The tenant stated that she had a verbal agreement with the landlord to move in early and that she felt uneasy that the landlord had entered her rental unit when she was not there and turned off the light.

The tenant states she vacated the rental unit and returned the keys by November 7, 2012. The tenant states that she gave the landlord notice on November 2, 2012 that she would be vacating and the landlord confirmed that he received her written notice on that date. The landlord indicated that he secured a new tenant for December 2012.

The tenant stated the following as reasons for vacating the rental unit after just a few days in the rental unit:

> #1. The tenant stated she had a verbal agreement with the landlord to move into the rental unit before the tenancy agreement start date of November 1, 2012.

According to the tenant, she stated she was given verbal permission to move into the rental unit on October 28, 2012 and that when the landlord entered the rental unit to turn off the porch light when she was not present, that made her uneasy.

#2. The tenant stated that the fireplace was not staying lit as it should and that due to the temperature being cold, she was not comfortable remaining in the rental unit. The tenant denies submitting anything in writing to the landlord regarding a request to repair the fireplace. The tenant stated that there was also an electric heater in the rental unit as an extra source of heat.

#3.On November 5, 2012, the tenant stated the “last straw” was when she was talking to her father on the phone and the landlord began to “verbally attack” her on about the porch light being on.

The landlord responded to each of the three claims above made by the tenant. Regarding tenant claim #1, the landlord disputes that he ever agreed to permit the tenant to move into the rental unit earlier than November 1, 2012. The tenant did not submit evidence to support that she was permitted to move into the rental unit earlier than the tenancy agreement indicated as November 1, 2012.

Regarding tenant claim #2, the landlord stated that he offered to assist the tenant with showing her how to use the fireplace and the damper correctly, but that the tenant was of that attitude that she knew what she was doing and did not need his assistance. As a result, the landlord felt that he was not welcome at the rental unit and did not receive anything in writing from the tenant indicating that she was unhappy with the fireplace which the tenant confirmed during the hearing.

Regarding tenant claim #3, the tenant called her witness, her father, FB. The witness testified under oath that he was on the phone with his daughter at about 7:30 p.m. on November 5, 2012, when the daughter indicated that the landlord was at the door of the rental unit. The witness stated that he could overhear an abrasiveness in the landlord’s tone over the phone and he recommended to her daughter that she move out immediately. The witness stated that the landlord raised his voice and said “turn the outside light off.” The witness stated that he was concerned for his daughter and that the tone of the landlord was not acceptable. The witness further stated that during the move-out inspection, the landlord did not have the same tone as he did on November 5, 2012, when the landlord’s voice was raised.

The landlord decided not to cross-examine the witness but stated that he did not agree with the statement from the witness that his tone was abrasive. The landlord stated that

he is hard of hearing. This was supported by the landlord's request during the hearing for the parties to speak louder and clearer as he was hard of hearing. The landlord stated that perhaps he was speaking to the tenant louder than most people due to his hearing loss, however in the landlord's opinion, he was speaking in a normal speaking voice.

The tenant claims that she did not feel safe in the rental unit due to the landlord's demeanour and that she felt threatened by the landlord. The landlord denies ever threatening or yelling at the tenant at any time. The landlord did acknowledge that he politely asked the tenant to turn off the porch light if she did not need the light on for the purposes of saving energy.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In the matter before me, the tenant has provided her version of events, and the landlord has provided a different version of events. I do not afford much weight to the witness testimony as the witness was not in the room with the parties, and was listening over a telephone. I accept that the witness may have heard the landlord's raised voice, but it is equally probable that the raised voice was due to the landlord's loss of hearing, as the landlord spoke loud at times during the hearing which the landlord attributed to his hearing loss. The tenant did not provide specific evidence that she was threatened by the landlord but claims she "felt threatened".

When a party claims that another party has threatened them, that is a serious accusation of which at the very least, the party making the claim should submit evidence supporting that claim. I do not find that the landlord turning off the porch light before the tenant had occupation of the rental unit in accordance with the tenancy agreement is evidence that would support immediately vacating the rental unit.

For the tenant to be successful in proving that she felt threatened, I would have expected the tenant to have written a letter of complaint to the landlord placing the landlord on notice that if a specific alleged threatening behaviour continued, that the tenant would have no other choice but to vacate the rental unit at the next occurrence.

The tenant confirmed that she did not advise the landlord in writing regarding the fireplace not staying lit and also confirmed that there was an alternate source of heat, an electric heater, in the rental unit. At the very least, as the tenant referred to the fireplace not staying lit as a reason for vacating the rental unit and her claim for compensation, I would have expected that the tenant would have written to the landlord to request that the fireplace be fixed, if broken, and in the mean time to rely on the electric heater as an alternate heat source.

Based on the above, **I find** the tenant has failed to meet the burden of proof in proving that the landlord breached the *Act*, regulation or tenancy agreement. Therefore, **I dismiss** the tenant's claim for compensation due to insufficient evidence, without leave to reapply.

As the tenant's claim did not have merit, **I do not grant** the tenant the recovery of her filing fee.

Conclusion

I dismiss the tenant's claim due to insufficient evidence, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 1, 2013

Residential Tenancy Branch