



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remcan Holdings Ltd. #2
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with a dispute over the \$50.00 filing fee for the Application.

Both parties appeared at the hearing and the Tenant was represented by legal counsel. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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 facts and issues in this decision.

Preliminary Matters

The parties attended a hearing on February 19, 2013, in this matter (the “First Hearing”).

At the First Hearing the Tenant and the Landlord advised the Arbitrator the Tenant had paid all the arrears in rent and the Landlord withdrew their request for an order of possession. The only outstanding issue was the payment of the \$50.00 filing fee for the Application.

The Tenant had requested an adjournment on that issue and the Landlord agreed and on March 8, 2013 the outstanding issue was scheduled for a hearing to be held today May 6, 2013.

During the hearing today the Tenant requested a second adjournment. The Tenant explained she wanted to write her story about why she withheld rent and that she had just retained legal counsel to represent her. When asked, Legal Counsel for the Tenant

had no submissions regarding how a refusal to allow an adjournment would prejudice the Tenant.

I find that the Tenant had from March 8, 2013, until May 6, 2013, to prepare for a matter involving the \$50.00 filing fee for the Application, and appears to have neglected to prepare for the hearing. I find the Tenant had ample time to prepare and in fact was represented by legal counsel, and is simply trying to delay this matter. I find the Tenant could present no evidence of a prejudice to her case if I refused her request for an adjournment. I find it would have prejudiced the Landlord to have granted a second adjournment, as the Landlord has already attended two hearings on an issue that was relatively minor in comparison with the serious issue of the Tenant refusing to pay rent. Therefore, for these reasons, I declined the request for an adjournment.

Issue(s) to be Decided

Is the Landlord entitled to the \$50.00 filing fee for the Application?

Background and Evidence

In October and November of 2012 the Tenant refused to pay the Landlord all of the rent due under their tenancy agreement. The Tenant was alleging that there was noise in the building where the rental unit is located and that is why she withheld the rent.

The Landlord issued a 10 day Notice to End Tenancy to the Tenant and the Agent for the Landlord testified that she explained to the Tenant that she would be evicted from the rental unit if she did not pay all the rent. The Tenant continued to refuse to pay all the rent.

The Agent for the Landlord testified that she explained to the Tenant that if the Landlord had to file an Application for Dispute Resolution that the Tenant would likely have to pay the filing fee for the Application. The Tenant still refused to pay all rent due.

On January 23, 2013, the Landlord filed an Application, requesting an order of possession for unpaid rent, a monetary order for unpaid rent, and to recover the filing fee for the Application, amongst other claims.

As described above, the Tenant had paid the arrears of rent prior to the First Hearing. The only issue unresolved was that of the filing fee for the Application, and the Tenant requested an adjournment for that sole issue to be determined.

The Agent for the Landlord appearing today explained that the Tenant has caused several disturbances at the building, including one today, the day of the hearing. The Agent for the Landlord submitted that the Landlord had to file this Application as the Tenant refused to pay rent and did not abide by the 10 day Notice to End Tenancy.

The Tenant argued that she withheld rent because there is noise in the building and the Landlord is not addressing her complaints.

As described above, the Tenant wanted an adjournment so she could make written submissions about why she withheld rent and why she should not have to pay the filing fee for the Application.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenant must pay the Landlord the \$50.00 filing fee for the Application.

It was explained to the Tenant and her legal counsel during the hearing that section 26 of the Act prohibits the Tenant from withholding rent, even if the Landlord is in breach of the Act or the tenancy agreement, unless the Tenant has some authority under the Act to reduce rent. For example, if the Tenant had an order from an Arbitrator at the Branch allowing her to reduce rent, then the Tenant would have lawful authority to withhold rent. In this instance, there is no evidence that the Tenant had any lawful authority to refuse to pay rent.

Therefore, I find that the Tenant was required to pay rent to the Landlord during the material times of this particular dispute. The Tenant refused to pay rent until after the Landlord filed their Application and a hearing was scheduled. Shortly before the First Hearing the Tenant decided to pay the rent in full.

I find that the breach of the Act by the Tenant in refusing to pay all rent due caused the Landlord to have to take the step of filing an Application and incur an expense; therefore, the breaches of the Act by the Tenant have caused a loss to the Landlord in the amount of \$50.00.

Section 67 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the breaches by the Tenant have caused the Landlord to suffer a loss in the amount of \$50.00.

I order the Tenant to pay the Landlord the sum of \$50.00. I grant and issue an order in those terms.

The Tenant may pay the Landlord directly, or may increase her rent one month by \$50.00.

Furthermore, I order that if the Tenant does not pay the Landlord the \$50.00 prior to the end of the tenancy, the Landlord may deduct the \$50.00 from the security deposit held.

Conclusion

The unlawful actions of the Tenant forced the Landlord to have to file an Application for Dispute Resolution. I find that the breaches of the Act by the Tenant caused the Landlord to suffer a \$50.00 loss for the filing fee for the Application. The Landlord has a monetary order for this amount, or, may deduct \$50.00 from the security deposit if the amount remains unpaid at the end of the tenancy.

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 Act.

Dated: May 06, 2013

Residential Tenancy Branch