



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, DRI, CNL, CNR, MNDC, MNSD, O

Introduction

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

1. For more time to make an application to cancel a notice to end tenancy – Section 66;
2. To cancel an additional rent increase
3. An Order canceling a Notices to End Tenancy - Sections 46 and 49;
4. A Monetary Order for compensation - Section 67;
5. An Order for the return of the security deposit – Section 38; and
6. Other

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

Preliminary Matter

At the onset of the Hearing the Tenant stated that she had moved out of the unit on May 31, 2013 and had not paid any extra rent pursuant to the rent increase that the Landlord had sought. Given this evidence, I found that the claim for return of the security deposit was made too early and dismissed this claim with leave to reapply. I also found that the remaining claims, with the exception of the claim for compensation, were no longer relevant as the tenancy has ended, rent was no longer payable, and no rent increases were paid. I therefore dismissed these claims.

Issue(s) to be Decided

Is the Tenant entitled to the amounts claimed?

Background and Evidence

The tenancy of a house with a partially finished basement started on July 1, 2011 and ended on May 31, 2013. Rent of \$650.00 was payable and at the outset of the tenancy the Landlord collected \$325.00 as a security deposit.

The Tenant states that the Landlord caused the Tenant's loss of enjoyment of the unit as follows:

- By repeatedly complaining about the Tenant's storage of her belongings in the basement and telling the Tenant to get rid of most of these belongings. The Tenant states that this went on for about three or four months and that the Tenant finally complied out of stress and placed them in a rented storage locker. The Tenant states that the Landlord also complained about the Tenant's other belongings such as her collection of movies on her bookshelf and told her to get rid of them so the Tenant also moved these items into storage. The Tenant states that as a result she could not access her grandchild's different sized clothing and could not do her arts and crafts;
- By failing to rid the unit of mice that appeared last winter and crawled through the walls, roof and cupboards. The Tenant states that the Landlord was immediately notified and that they only provided poison which the Tenant did not use as she had health and safety concerns with the use of poison. The Tenant then purchased her own traps and an electric mouse repellent which reduced the appearance of the mice. The Tenant states that as a result of the mice she had to throw away a lot of food and spend significant time cleaning the kitchen cupboards and drawers on a near daily basis;

- By repeatedly attending the Tenant's unit with no notice and entering without knocking or being invited inside. The Tenant states that after moving into the unit the Landlord placed the unit up for sale and that the Tenant agreed to accommodate the showings of the unit with as much notice as possible. The Tenant states that once in a while the Landlord would give her a half hour notice to bring persons into the house for showings but that the Landlord would come and go as she wanted and told the Tenant that it was the Landlord's ability as the Landlord owned the unit. The Tenant submits that as a result she was unable to bake or can food or have guests as she never knew when the Landlord would come in to yell or complain.
- By failing to have a smoke detector in the basement for the near duration of the tenancy. The Tenant states that it was not until a realtor came to the unit that the Landlord installed a smoke detector and a week later a carbon monoxide detector.
- By failing to rid the unit of ants and spiders. The Tenant states that the ants were removed by the Tenant herself and that the spiders were in the basement area.

The Tenant states that she did nothing about her issues during the tenancy as the Tenant wanted peace with her Landlord and because the Tenant was afraid that if she complained, refused or made an application for dispute resolution the Landlord would evict her and she did not have any money to move.

The Landlord states that the Parties made an agreement that the Tenant would get cheap rent in return for the Tenant opening the house for showings and keeping the unit clean. The Tenant agrees that the Landlord was told she could show the unit during the tenancy but this agreement included sufficient notice. The Tenant states that it was not until a real estate agent became involved in the showing of the unit a few months prior to the end of the tenancy that sufficient notice was ever received.

The Landlord states that the Tenant was asked to remove articles because the basement was full and the back door was blocked and that the house was too cluttered. The Landlord states that the house was unsafe this way and that the Landlord is not responsible for storage costs as the Landlord did not tell the Tenant to put her things in storage or to get rid of anything. The Landlord states that she only told the Tenant that the house was too cluttered. The Landlord states that they left poison for the Tenant to deal with the mice and that the Tenant never informed the Landlord that this method was a problem. The Landlord states that the Tenant never mentioned any ants or spiders and that all houses get spiders. The Landlord states that she is sure that there was a smoke detector at the bottom of the stairs and that the Landlord out of concern for the child in the unit, placed a carbon monoxide detector in the unit as well. The Landlord wonders why the Tenant stayed so long if she was so unhappy.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

Section 29 of the Act provides that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless, inter alia, the tenant gives permission at the time of the entry or not more than 30 days before the entry;

Although I accept that the Landlord repeatedly requested entrance to the unit without any or with very little notice, given that the Tenant did not refuse entry at these times I cannot find that the Landlord acted contrary to the Act or caused the Tenant any losses. Further, by agreeing to move and store personal belongings elsewhere, the Tenant

cannot claim that the Landlord caused the Tenant the cost of the storage or the loss of enjoyment of the articles stored.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. This section further provides that a landlord's obligations apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. 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, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Although I prefer and therefore accept the Tenant's evidence that no smoke detector was in place during the majority of the tenancy, as the Tenant has not provided any evidence of losses arising from this breach by the Landlord, I find that the Tenant has not substantiated that the Landlord's breach caused any losses and I dismiss this claim. As the Tenant did not inform the Landlord that their procedure for ridding the unit of mice was unacceptable, the Landlord had no opportunity to provide further pest control. As a result, I cannot find that the Landlord acted negligently and I dismiss this claim. I accept the Landlord's evidence that the Tenant did not inform the Landlord of problems with ants and spiders and as a result had no opportunity to act on this matter as well and I dismiss this claim.

As none of the Tenant's claims have been substantiated, I dismiss the Tenant's application.

Conclusion

The Tenant's application is dismissed.

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 17, 2013

Residential Tenancy Branch

