



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Prior to the hearing the landlord submitted a written statement that he was not able to obtain the permits required to demolish the house and would like to rescind the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on April 30, 2013.

Residential Tenancy Policy Guideline #11 stipulates that a landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. Only with the consent of the party to whom it is given can a Notice be withdrawn prior to its effective date.

Also prior to the hearing the tenant submitted her own notice to end the tenancy dated May 30, 2013 with an effective date of June 30, 2013 in accordance with the 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on April 30, 2013.

For these reasons, I find it is unnecessary to adjudicate the portion of tenant's Application seeking to cancel the 2 Month Notice and I amend the tenant's Application to exclude this matter.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for the costs of registered mail; damage to garden decorations; a florescent bulb; and for aggravated damages, pursuant to Section 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began in July 2011 as a 6 month fixed term tenancy and converted to a month to month tenancy for a monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 paid.

The tenant originally applied to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and then subsequently amended her Application. As required under the *Act*, the tenant served the landlord with the hearing documents; her Application and her evidence. The tenant chose to serve the landlord by registered mail. The tenant seeks compensation for the cost of registered mail to the landlord, in the amount of \$19.16.

The tenant submits that on May 20, 2013 when they returned home the landlord was "weed wacking the large lawn". The tenant goes on to state that she and the tenants in the basement unit normally have cared for the lawn and garden during the tenancy. The tenant submits that as a result of this the landlord had damaged their garden decorations. The tenant seeks \$5.00 in compensation for these ornaments. The tenant spoke to the landlord about this issue.

The tenant also submits that on the same date she discovered that the outside water was not working and she later found out the landlord had told the basement tenants to shut off the outside water. The tenant submits this restricted her daughter from being able to use the sprinkler to cool off in recent hot weather. The tenant did not speak to the landlord about this issue.

The tenant submits that on May 22, 2013 she noticed that the florescent light bulb was missing from the storage area under the patio. She states that she and the landlord are the only ones who access this area. The tenant seeks compensation in the amount of \$5.00 for the florescent light bulb. The tenant did not speak to the landlord about this issue.

The tenant submits that the landlord had issued her a 2 Month Notice to End Tenancy for Landlord's Use on April 30, 2013 citing the landlord had all the necessary permits to demolish the rental unit but that the city was called the next day and it was confirmed that no permits had been issued.

The tenant states that on May 3, 2013 she and the landlord discussed the Notice and the possibility of ending the tenancy later (August 2013); that he might compensate the tenant for some moving costs; and that he may know of a landlord who has a property for rent.

The tenant submits that a for sale sign was posted on the property on May 9, 2013 and that on May 13, 2013 she sought to have the landlord sign an agreement that the tenancy would remain effective until August and that the landlord was willing to give her a few months worth of rent for moving expenses. The tenant submits the landlord reneged on the offer for compensation.

The tenant submitted her Application for Dispute Resolution seeking to cancel the April 30, 2013 Notice to End Tenancy on May 14, 2013.

On May 19, 2013 the tenant states she received notice that a potential buyer would be viewing the rental unit between 12:30 and 2:00 p.m. The tenant submits this is contrary to what she and the basement tenant had determined as reasonable times because the basement tenant works nights and sleeps during the day. The tenants had agreed that times between 4:30 and 5:30 were acceptable times.

The tenant submits that on May 29, 2013 the landlord delivered a 2nd 2 Month Notice to End Tenancy for Landlord's Use of Property dated May 28, 2013, with an effective date of July 31, 2013 citing the landlord and his family intend to move into the rental unit. The tenant acknowledged that she secured her new accommodation prior to receiving this second Notice.

The tenant seeks aggravated damages in an amount equivalent to 3 months rent for the "extra stress of dealing with Kuldip's wavering, mind games and his disregard for us and our personal possessions. The tenant submits that the landlord's actions have caused her daughter to not be able to enjoy the sprinkler; rendered the tenant unable to power wash around the property.

The tenant also submits that the landlord, last year, cut down a huge tree on the property without notice to the tenants, which severely devastated her daughter. She states that had the landlord notified the tenant, in advance, she could have prepared her daughter ahead of time.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As to the tenant's claim for reimbursement of registered mail fees, I note that the tenant chose to serve the landlord by registered mail in regard to her Application for Dispute Resolution. Costs associated with pursuing such an application are not recoverable.

As the tenant did not speak to the landlord regarding the issue of the fluorescent light bulb or shut off of outside water, I find it is premature to seek compensation for these items.

While I accept the tenant did discuss the issue of the garden ornaments with the landlord I am not satisfied that she sought compensation from the landlord. In addition, I note the tenant failed to provide any evidence to establish the value of the ornaments.

Residential Tenancy Policy Guideline #16 defines aggravated damages as an award of compensatory damages for non-pecuniary losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, and mental distress are considered non-pecuniary losses. Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour.

Aggravated damages may be granted if the damage is caused by a deliberate or negligent act or omission of the wrongdoer; the damage must be of a type the wrongdoer should have reasonably foreseen the time they entered into the contract that the breach would have caused distress to be claimed; and it must be sufficiently significant in depth or duration or both that they represent a significant influence over the wronged person's life.

I accept that the landlord appears to be unclear as to what his intentions are regarding the residential property as demonstrated by his issuance of two different notices and posting the property for sale and then taking it off the market all within a short period of time.

However, it is clear that the landlord was seeking to end the tenancy regardless of being vague on the details. By law the landlord is entitled to issue a notice to end any tenancy. It is not uncommon for parties to negotiate additional terms when ending the tenancy such as some compensation for moving costs, however, unless these terms or agreements are duly agreed upon and put into writing they remain as negotiations only. If these negotiations result in no additional terms or compensation there is no obligation on either party, under the *Act*.

Just as a landlord has the right to issue a notice to end a tenancy the tenant has the right to either dispute the notice or accept it and vacate the property in compliance with the notice received. I find the tenant availed herself of both of these options, first by applying to dispute the Notice and then by agreeing to find new accommodation and move in accordance with the Notice.

I accept that while receiving a notice to end your tenancy is, in itself, upsetting that upset can be compounded when there are confusing details surrounding the notice. However, I find that these issues occurred over a short duration of time and the tenant

has failed to provide any evidence to show an unreasonable amount of stress caused a significant influence over the tenant's life.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

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 11, 2013

Residential Tenancy Branch

