



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton Centre Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant AS's application filed April 5, 2013: CNR; MNDC; OLC; FF; O

Tenant DL's application filed February 22, 2013: MNDC; OLC; RR; FF

Introduction

Two Tenants filed two Applications against the same Landlord, at the same residential property. The Tenant AS applied to cancel a Notice to End Tenancy for Unpaid Rent; for compensation for damage or loss; for an Order that the Landlord comply with the Act, regulation or tenancy agreement; to recover the cost of the filing fee from the Landlord; and for "other" relief.

The Tenant DL applied for compensation for damage or loss under the Act, regulation or tenancy agreement; for an Order that the Landlord comply with the Act, regulation or tenancy agreement; for a reduction in rent; and to recover the cost of the filing fee from the Landlord.

The Tenant AS's Application was convened on May 3, 2013. During the course of the Hearing, it became apparent that there had been a Decision made on March 20, 2013, with respect to the Tenant DL, that had a direct impact on Tenant AS. The Landlord had required DL to pay utility bills in full to the utility providers and to collect AS's portion directly from AS. The Landlord had issued a Notice to End Tenancy alleging AS had not paid his portion of utilities, which AS disputed. DL submitted that AS had not paid him his share of utilities and sought to recover the cost from the Landlord. **During the Hearing on May 3, 2013, the Notice to End Tenancy for unpaid rent was canceled, because I found it did not comply with the provisions of Section 52 of the Act as it was not signed by the Landlord.**

The Landlord made an Application for Review Consideration regarding the Decision of March 20, 2013, and was successful. Tenant DL's Application was set to be reheard on May 13, 2013.

At the Hearing on May 13, 2013, I advised the parties that the Tenant DL's Application is adjourned to be reconvened with the Tenant AS's Application, pursuant to the provisions of Sections 64(4) and 73 of the Act and Rules 2.2, 6.5 and 13.6 of the

Residential Tenancy Branch Rules of Procedure. I also made certain Orders with respect to service of documents and the required time limits for the parties to exchange their documents. These Orders were set out in an Interim Decision dated May 13, 2013, which should be read in conjunction with this Decision.

A Hearing was scheduled for June 4, 2013, to hear both Tenants' Applications.

At the outset of the June 4, 2013, Hearing, the Tenant AS ("AS") testified that he provided the Tenant DL ("DL") with a copy of his Application and his documentary evidence by registered mail sent May 22, 2013. AS provided the tracking number for the registered mail.

DL testified that he did not serve AS with a copy of his Application and documentary evidence because he did not know that he had to do so. DL stated that he did not get a copy of my Interim Decision of May 13, 2013. He stated that the Notice of the June 4th Hearing arrived in the mail, but that the envelope had been opened. He stated that he shared the same mail box with AS and that he would have complied with my Order if he had received the Interim Decision.

I advised the parties that we would be adjourning again so that DL could provide AS with a copy of his Application and documentary evidence. I made certain Orders with respect to service of documents and the required time limits for the parties to exchange their documents. During the Hearing on June 4, 2013, AS stated that he had paid DL money towards utilities and that he could produce documents or receipts to prove that he had. I also made an Order that AS provide receipts for all utilities that he has paid since August, 2012. An Order was also made with respect to parking at the rental property. These Orders were set out in an Interim Decision dated June 14, 2013, which should be read in conjunction with this Decision.

Issues to be Determined

Is AS entitled to compensation for harassment and loss of peaceful enjoyment of the rental unit? Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

Is DL entitled to compensation for damage or loss under the Act, regulation or tenancy agreement? Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement? Is DL entitled to a reduction in rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The rental property is a house containing two suites, a shared driveway and other common areas. AS lives in the lower suite and DL lives in the upper suite. The suites do not have separate heating controls.

AS and DL each accuse the other of harassment. The Landlord claims that she could not determine which Tenant was significantly interfering with or disturbing the other, and therefore she did not issue a Notice to End Tenancy for Cause to either Tenant.

AS gave the following testimony:

AS submitted that DL manipulates the heat in the rental property and that he has had little or no heat since April of 2013. He testified that DL has also stolen from him and causes noise disturbances at night, causing him to lose sleep. AS submitted that as a result of lack of sleep, he is unable to work. AS provided copies of documents that he stated he intends to file in Court, including Affidavits, Certificates of Non-Response and a Notice of Claim. AS also alleges that DL has drug dealers visiting "at all hours of the day and night"; denies AS access to common areas; is living with two pedophiles; and tampers with AS's mail.

AS stated that he has advised the Landlord of the above, but she will not do anything to protect his right to quiet enjoyment. He stated that the Landlord told him that evicting a nuisance tenant is too difficult and requires too much paper work; that she does not believe him; and that if he cannot work in out with DL, he should just move.

The Tenant seeks monetary compensation, calculated as follows:

Loss of income due to lack of sleep and preparation for dispute resolution:

| | |
|-------------------------------------|------------|
| January, 2013 (67 hours @\$60.00) | \$4,020.00 |
| February, 2013 (28 hours @ \$60.00) | \$1,680.00 |
| March, 2013 (72 hours @ \$60.00) | \$4,320.00 |
| April, 2013 (40 hours @ \$60.00) | \$2,400.00 |

Rent abatement for loss of peaceful enjoyment:

| | |
|------------------------|--------------------|
| (\$850.00 x 15 months) | <u>\$12,750.00</u> |
|------------------------|--------------------|

| | |
|-------|-------------|
| TOTAL | \$25,170.00 |
|-------|-------------|

AS abandons any amount over \$25,000.00 in order to fall within the jurisdiction of the Residential Tenancy Act.

DL gave the following testimony:

DL stated that most of his claims have already been addressed by the Landlord. He stated that the owner of the rental unit has reimbursed him for AS's share of the utilities, in the amount of \$600.00. DL stated that the Landlord has put the utilities into the Landlord's name so DL is no longer required to pay the whole amount and then wait for AS to pay him for his share. DL stated that AS was turning off their heat and hot water,

but that the Landlord placed control of the heat for the rental property back in his hands on April 10, 2013. My Order of June 14, 2013, addressed DL's concern over AS taking up both parking spaces at the rental property.

Analysis

Regarding AS's application:

It is important to note that on June 4, 2013, **AS stated that he had paid DL money towards utilities and that he could produce documents or receipts to prove that he had.** I made an Order that he provide documentation to prove that he had paid for his share of utilities, but he did not. Instead, on July 2, 2013, AS provided a letter dated June 24, 2013, in evidence, which states, in part:

"This document [is] to advise, confirm and clarify that [AS] has NOT paid any amount in utilities to any named party attending this matter for the period starting September 1 2012 and ending on April 30 2013.

No receipts can be provided for this period or any other period over the last Five years because neither the landlord nor [DL] has tendered receipts for any payments made for rent and utilities."

AS's testimony contained inconsistencies and therefore, where his testimony and the Landlord's and DL's testimony differ with respect to payment of utility bills, I prefer the testimony of the Landlord and DL. **I find that AS did not pay any utilities and that he was provided with copies of the utility bills.**

This is AS's claim for damage or loss under the Act and therefore he has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Landlord pay for the loss requires AS to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that AS followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that AS did not provide sufficient evidence to prove his claim for the following reasons:

- AS did not provide sufficient evidence that DL manipulates the heat in the rental property and that he has had little or no heat since April of 2013.
- AS provided insufficient evidence that DL has stolen from him or that DL causes noise disturbances at night, causing him to lose sleep.
- AS provided insufficient evidence that DL has drug dealers visiting “at all hours of the day and night”; denies AS access to common areas; is living with two pedophiles; and tampers with AS’s mail.
- AS provided insufficient evidence of his employment status, his regular hours of work, what specific hours of work were missed, his hourly wage, or the reason for the missed work.

Even if I were to accept that the Landlord has not complied with Section 28 of the Act, which I do not, AS is seeking total abatement of all rent paid for the past 15 months, which is unreasonable.

Therefore I find that AS has failed to provide sufficient evidence to prove a loss or the actual amount required to compensate for any loss and I dismiss the Tenant’s claim for compensation without leave to reapply.

I find that the Tenant’s application lacked merit and that he is not entitled to recover the cost of the filing fee from the Landlord.

Regarding DL’s application:

During the course of the Hearing, the Landlord and DL came to a settlement agreement. They agreed that neither party owes the other any money or other compensation as at July 19, 2013, and that the parties will make no more claims against the other for damages, unpaid rent or utilities, or other compensation, from the beginning of the tenancy to and including July 19, 2013.

Conclusion

The Notice to End Tenancy for Unpaid rent issued April 3, 2013, was canceled on May 3, 2013. The Tenant AS's application for a Monetary Order is **dismissed in its entirety, without leave to reapply.**

The Tenant DL withdrew his application and reached a settlement agreement with the Landlord.

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: July 25, 2013

Residential Tenancy Branch