



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAT, LRE, MT, OLC

Introduction

This is an application to cancel a Notice to End Tenancy that was given for cause, a request for a Monetary Order for \$3850.00, and a request for recovery of the \$50.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The applicant had originally applied for an Order to cancel a Notice to End Tenancy, however she has subsequently vacated the rental unit and therefore that is no longer an issue.

The issue therefore is whether or not the applicant has established a monetary claim for \$3850.00, and recovery of her \$50.00 filing fee.

Background and Evidence

The applicant testified that:

- Due to ongoing harassment by the landlords she had a loss of use and enjoyment of the rental unit for the majority of the time that she lived in the rental unit and she is therefore requesting an order for the return of the equivalent of three months' rent.
- She has provided no evidence in support of her claim of ongoing harassment as she has had insufficient time.
- She is also requesting the return of her full security deposit.
- She is also requesting that the landlords pay a moving fee to cover her cost of relocating. She was informed by the Residential Tenancy Branch that if the landlord gives her a Notice to End Tenancy the landlord must pay a moving fee.

She is therefore requesting a Monetary Order as follows:

Return of the equivalent of three months' rent	\$2850.00
Return of security deposit	\$500.00
Moving fee to relocate	\$500.00
Filing fee	\$50.00
Total	\$3900.00

The respondents testified that:

- They have not harassed the tenant, and have only knocked on the tenant's door for legitimate reasons such as checking on the well-being of the tenant's son when they heard him screaming, and checking to find out why the rent had not been paid.
- In their opinion it's been the tenant who's has been harassing them, as the tenant calls the RCMP every time they knock on her door to deal with any of these legitimate issues.
- They believe the tenants claim should be dismissed in full.

Analysis

Return of the equivalent of three months' rent

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

The applicant in this case is requesting the return of the equivalent of three months' rent claiming ongoing harassment by the landlords; however she has provided no evidence in support of this claim and the landlords deny ever harassing the tenant.

It is my decision therefore that I will not allow the claim for the return of the equivalent of three months' rent as it is just the applicant's word against that of the respondents and that is insufficient to meet the burden of proof.

Security deposit

The tenant has applied for the return of her security deposit; however the tenant did not give the landlord(s) a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for dispute resolution.

Therefore at the time that the tenant applied for dispute resolution, the landlord(s) were under no obligation to return the security deposit and therefore this application is premature.

I therefore dismiss this portion of the claim with leave to re-apply.

Moving fee

The tenant moved subsequent to a one month Notice to End Tenancy, and there is no provision under the Residential Tenancy Act requiring a landlord to compensate the tenant when the tenant is given a one month Notice to End Tenancy.

I therefore will not allow the claim for moving fees.

Filing fee

The request for recovery of the filing fee will not be allowed, as I have not allowed any of the tenants claim.

Conclusion

The claim for return of the \$500.00 security deposit is dismissed with leave to reapply, at least 15 days after the tenant serves the landlord with a forwarding address in writing.

The remainder of the applicants monetary claim is dismissed in full without leave to reapply.

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: August 19, 2013

Residential Tenancy Branch

