



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

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. A Monetary Order for compensation for loss – Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

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

Issue(s) to be Decided

Is the Tenant entitled to the momentary amount claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on September 1, 2012 and ended on April 30, 2013. Rent of \$700.00 was payable monthly. The Tenant was an employee of the Landlord’s business carried out on the property.

The Tenant states that the tenancy agreement included, in an addendum, a provision for the use of the shop on the property by the Landlord and its employees during business hours. The Landlord states that the provision allows use of the shop at any time. No copy of the tenancy agreement was provided as evidence.

The Tenant states that on the evening of April 8, 2013 and to at least midnight, the Landlord's husband was on the property going in and out of the shop and walking on the driveway connecting the back of the house with the shop. The Tenant states that this frightened the Tenant as the Tenant has previously witnessed this person being violent with animals and abusive to other employees. The Tenant states that two days prior the husband was seen by other employees hitting a dog. The Tenant states that at this time the Landlord told the Tenant that the husband would not be on the property for a period of time. The Tenant states that she called the Landlord and that the Landlord refused to have him removed from the property. The Tenant states that the police were called but they refused to attend as there was no evidence of any criminal behavior being reported. The Tenant states that this incident frightened the Tenant and that the Landlord breached the Tenant's right to quiet enjoyment by failing to have the husband removed from the property. The Tenant claims \$700.00 as compensation.

The Landlord does not dispute that the husband was witnessed by other employees carrying out a "fine line" abuse of the dogs but that this was not witnessed by the Tenant and that the Tenant never told the Landlord about any other previous behavior of the husband that was of concern to the Tenant. The Landlord states that her husband co-owns the business and the rental unit and has every right to be on the property. The Landlord states that when the Tenant called about the presence of the husband the Landlord agreed that the Tenant should call the police. The Landlord states that she was waiting for the police to attend and to contact her before she would do anything about the presence of the husband however no call was ever received from the police and the Tenants did not call her back either. The Landlord argues that the incident was a onetime occurrence and does not constitute a breach of the Tenant's right to quiet enjoyment. The Landlord states that the Tenant also spoke with the husband the next day about moving an article of furniture and was not distressed by this encounter.

The Tenant states that she did speak with the husband near the move-out date about moving an article of furniture and that the conversation was civil as the Tenant was afraid of the husband. The Tenant states that she herself witnessed the husband hitting

dogs at least four times over the year and that the other employees told her of their fear of the husband.

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*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

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. Given the conflicting evidence in relation to the use and access to the shed by the Landlord or her husband or employees, and considering that no tenancy agreement was provided as evidence on this point, and accepting the undisputed evidence that the Landlord's husband owned the business with the Landlord, I cannot find on a balance of probabilities that the Landlord's husband had no right to be on the property.

Although the Tenant states that she witnessed the husband act violently towards animals during the course of her employment, the Tenant did not provide any evidence

of any threatening actions towards the Tenant. Further, the incident for which the Tenant claims compensation was a onetime occurrence and no evidence was provided that the husband acted in any way to threaten, intimidate or interfere with the Tenant other than being outside the unit. As a result, I find that the Tenant has not provided sufficient evidence to substantiate a breach of the Tenant's right to quiet enjoyment and 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: August 20, 2013

Residential Tenancy Branch