



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the landlord is entitled to a monetary order and if so how much?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on June 1, 2013. The tenancy agreement provided that the tenant(s) would pay rent of \$585 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$250 on May 24, 2013.

The tenancy ended on August 9, 2013. The landlord deducted the rent for August and returned the balance of the deposit.

The tenant seeks a monetary order in the sum of \$4022. She testified the landlord painted the rental unit in an oil based paint and thus she could not the rental unit. The landlord seeks a monetary order in the sum of \$1500.

The tenant complained about the fumes from the oil based paint shortly after moving in. The landlord provided her with a fan for a couple of days and told her that the fumes would dissipate if she left the windows and door open. She testified she placed her furniture in the rental unit and returned on a daily basis. However, she spent most of her times at a friend's place who lived a short period down the road (6 to 10 kilometres).

The landlord testified that he witnessed the rental unit from the outside and the tenant seldom left the doors and windows open. He reduced the rent by \$100 for July to assist the tenant.

Landlord's Witness #1 testified that she lives close to the rental unit and the tenant was seldom home and the doors and windows were usually closed. She further testified that her rental unit was painted with a oil based paint and the fumes dissipated in three or four days. Tenant's Witness #1 testified the tenant was often at the rental unit and fumes were strong in June and July. However, at the end of July he removed a window and the smell dissipated significantly.

The tenant refused to pay the rent for August and asked the landlord for a discount of a rent-free August as compensation for the fumes. The landlord refused. He subsequently served a 10 day Notice to End Tenancy. The tenant removed her belongings by August 9, 2013. The landlord withheld the equivalent of 9 days of rent and returned the balance of the security deposit to the Tenant. The landlord re-rented

the rental unit with the new tenant taking possession on September 1, 2013. The new tenant provided evidence there is no problem with the fumes.

Tenant's Claim:

The Residential Tenancy Act includes the following relevant provisions:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

How a tenancy ends

- 44** (3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

The tenant submits that she is entitled to compensation for the cost of moving because she vacated due to the fumes from the oil based paint. In particular she seeks \$254 for 2 months of self-storage, \$173.48 for the cost of a U-Haul moving truck, \$186 for the cost of emergency movers, \$173 for additional cost to re-rent the U-Haul truck to move her belongings from storage to her new place and \$120 for the estimated cost of movers. There is no basis for this claim. I determined the fumes had dissipated by the end of July and the smell was insignificant. Tenant's Witness #1 confirmed this. Further, even if there was a smell this did not give the tenant the right to end the tenancy.

The costs of vacating the residential rental unit was not caused by the fumes but was caused by the tenant's failure to pay the rent for August. Section 26(1) of the Residential Tenancy Act provides that the tenant must pay the rent whether or not the landlord has complied with the Act, regulations or tenancy agreement unless the tenant has first obtained an order from an arbitrator to deduct it from future rent. The condition

of the rental unit at the end of July could not be considered to be so significant to amount to a breach of a material term of the tenancy agreement. The tenant asked the landlord for compensation for the reduce value of the tenancy. The landlord refused. It was open for the tenant at that time to file an Application for Dispute Resolution to seek compensation. The tenant chose to end the tenancy and vacate. These claims are not the landlord's responsibilities and are dismissed.

I dismissed the tenant's claim of \$600 for the cost of room and board living with her friend. There is no evidence that she paid these costs. This claim is not reasonably foreseeable.

The tenant seeks reimbursement of the rent for June in the sum of \$285, gas running between her friend's place and her in the sum of \$215, reimbursement of the rent for July in the sum of \$485, gas used running to and from the property in the sum of \$145, and \$127.10 for gas for August. I determined the tenant failed to prove that the landlord is responsible for most of these claims. I determined the primary cause of the presence of the fumes for such an extended times was the failure of the tenant to open the rental unit to allow the fumes to dissipate. Witness #1 that had the tenant properly ventilated the rental unit the fumes would have dissipated in 3 to 4 days. At the very most I determined that the fumes would have dissipated in 7 days. Thus I determined the tenant is entitled to compensation in the sum of \$136.50 for June which would be the 7 days. The claim for reimbursement of the balance of the rent for June is dismissed. Similarly the claim for rent for July is dismissed. The landlord voluntarily reduced the rent for July by \$100 and he is not entitled to recover this sum.

I dismissed the tenant's claim for compensation for the cost of gas to go from her friend's residence to the rental unit. The distance was short. The tenant failed to keep a proper accounting of the number of times she drove. Had the tenant properly ventilated the rental unit the fumes would have been a problem for 7 days or less.

I dismissed the tenant's claim for pain and suffering due to the stressful situation in early August. The tenant failed to produce medical evidence to support a claim for pain and suffering. Further, the reason for the stress alleged by the tenant was because the tenant chose to withhold the rent and was evicted. This was a choice she made and the landlord is not responsible to pay compensation for this. The tenant failed to prove she is entitled to compensation for the conflicts that occurred between the landlord and her at the end of the tenancy. The landlord has a legal right to install speed bumps and build trenches.

In summary I determined the tenant has established a claim against the landlord in the sum of \$136.50.

I dismissed the tenant's claim for return of the security deposit.

Director's orders: fees and monetary orders

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

....

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

The tenancy ended as a result of the tenant decision to withhold the rent. The landlords could have claim for the balance of the rent owed for August. However, they have chosen not to pursue that claim. Instead they deducted the 9 days of rent that was owed for August and returned the balance of the security deposit. The remainder of the tenant's claims are dismissed. .

Landlord's Claim:

I dismissed the landlords' claims. The landlord testified he was not interested in obtaining a monetary order against the tenant and failed to present sufficient evidence

to support his claims. I determined most of the claims brought by the landlord were for matters he generously gave to the tenant. He is not permitted to now obtain financial redress for these items.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$136.50.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: November 29, 2013

Residential Tenancy Branch

