



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This Hearing was convened to hear the Tenant's application seeking compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with the Notice of Hearing documents and copies of her documentary evidence by registered mail sent September 4, 2013.

It was also determined that the Landlord served the Tenant with copies of his documentary evidence by registered mail sent November 20, 2013.

Issues to be Decided

1. Is the Tenant entitled to compensation for loss of peaceful enjoyment of the rental unit, the cost of moving and loss of laundry facilities?

Background and Evidence

The rental unit is a suite in the Landlord's residence.

There was no written tenancy agreement between the parties. The Landlord stated that the Tenant was provided with a tenancy agreement, but she declined to sign it. The Tenant disputed that she had been provided a tenancy agreement.

The parties agreed on the following terms of their oral tenancy agreement:

- The tenancy began on October 23, 2013, and ended on July 31, 2013.

- At the beginning of the tenancy, rent included laundry. On May 28, 2013, the Landlord provided the Tenant with written notice that he was terminating the laundry facilities effective June 30, 2013. A copy of the Notice was provided in evidence. The Landlord reduced the monthly rent by \$50.00 a month effective July 1, 2013, in compensation for the termination. Monthly rent was \$704.00 at the end of the tenancy.
- The security deposit in the amount of \$350.00 was returned to the Tenant on or about July 31, 2013.

The Tenant gave the following testimony:

The Tenant stated that the Landlord had complained about noise at the beginning of the tenancy. She submitted that the noise was reasonable and related to normal living; for example, the sound of the television or radio. The Tenant stated that the Landlord sent an e-mail threatening eviction.

The Tenant testified that she felt harassed while she was living in the rental unit for the following reasons:

- In March, 2011, a 16 year old girl moved into the rental unit. She stated that the Landlord issued a Notice to End Tenancy for Cause, which the Tenant successful disputed on May 9, 2011.
- Following that Hearing, the Landlord illegally entered the rental unit while the girl was home. The girl moved out shortly afterwards.
- The Tenant stated that in June, 2011, she spilled some coffee grounds so she used the vacuum cleaner. She stated that she got a rude note from the Landlord about using the vacuum cleaner at night.
- Three nights after the vacuum incident, the Tenant had some guests over for her son's birthday. At 9:45 p.m., the Landlord appeared at her door in boxing shorts making unfounded accusations. The Tenant felt humiliated and embarrassed and put her concerns in writing; however, as she was about to give the Landlord the letter, he knocked on her door, crying and apologizing.
- Things settled down for a while and then many months later she got a note from the Landlord about laundry being for her personal use only and not for the use of friends and family.
- In May, 2013, she got the notice terminating laundry facilities.

The Tenant stated that after she got the termination notice, she sent the landlord a letter. She testified that she felt the Landlord wanted her out of the rental unit and that this was his way of evicting her. She stated that the Landlord's response was offensive,

based on unfounded speculation and not true. The Tenant stated that the Landlord did not address her concerns, but merely responded with more accusations.

The Tenant submitted that removal of the laundry facilities was the “straw that broke the camel’s back”.

The Tenant stated that \$50.00 a month was too little to compensate her for the loss of laundry facilities. She stated that the access to laundry was a material term of the tenancy agreement, and that therefore the Landlord could not terminate it. The Tenant stated that it actually cost her \$59.90 a week to do her laundry at a Laundromat. The Tenant seeks compensation in the amount of **\$189.60**, calculated as follows:

4 loads a week = \$20.00 + travel and time (1.5 hours x \$25.00 an hour = \$37.50
= driving 6 kms x \$.40 = \$2.40.

\$59.90 a week x 4 weeks = \$239.60 minus \$50.00 rent reduction = \$189.60

The Tenant also seeks moving costs in the amount of **\$1,453.28**, calculated as follows:

Gas	\$120.00
Cleaning	\$80.00
Hired help	\$180.00
Change of Address	\$83.95
Storage	<u>\$989.33</u>
TOTAL	\$1,453.28

The Tenant also seeks compensation for loss of quiet enjoyment in the equivalent of two month’s rent, in the amount of **\$1,408.00**. She submitted that the Landlord’s actions effectively evicted her and that had he given notice under the Act for Landlord’s Use, he would have had to give her two months’ notice and pay her compensation.

The Landlord gave the following reply:

The Landlord stated that the Tenant was a friend of a previous tenant, and that he allowed her to move in early. The Landlord stated that on the first night of her tenancy, the Tenant had loud music playing until 3:00 a.m. and that there were three incidents of undue noise the first month of the tenancy.

The Landlord testified that the Tenant was using the vacuum late at night, which was disturbing his sleep.

The Landlord stated that unreasonable noise was an issue in 2011, but that it abated.

The Landlord testified that the 16 year old girl moved in with no notice from the Tenant. He denied entering the suite without the Tenant's permission. He stated that there was dirt around the doorway of the rental unit for several days and that he knocked on the door to ask someone to clean it up. The girl answered the door.

The Landlord stated that the Tenant was doing excessive laundry. He testified that the laundry was running all day, three days a week, so he thought the Tenant must be doing laundry for friends or family. The Landlord stated that he gave proper notice to terminate laundry facilities and that he felt \$50.00 a month was sufficient compensation. The Landlord testified that there is a public Laundromat located right beside the Tenant's workplace and that it would not cost her extra mileage to do her laundry there.

The Tenant gave the following reply:

The Tenant denied doing laundry that often. She stated she couldn't possible do laundry all day, three days a week because she works.

The Tenant stated that the Landlord had his own separate laundry facility and that her use of the laundry was not impeding his own ability to do laundry.

The Tenant stated that she felt that the Landlord made everything she did his business.

Analysis

In a claim for compensation for damage or loss under the Act, regulation or tenancy agreement, the applicant has the burden of proof to establish their 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 the Tenant to prove 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 Tenant in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 27 of the Act states that a landlord must not terminate a facility if it is essential to the tenant's use of the rental unit as living accommodation; or if providing the facility is a material term of the tenancy agreement. I do not find that laundry facilities are essential to the Tenant's use of the rental unit for living accommodation. This would apply more to things such as cooking appliances, hydro or running water. There is no written tenancy agreement and therefore I do not find that the laundry facility is a material term of the contract. The Tenant did not advise the Landlord, in writing, that she considered use of laundry facilities a material term of the contract.

The Tenant's remedy would have been to advise the Landlord of the amount of compensation she believed was reasonable for the loss of use of the laundry facilities; and if the parties could not come to an agreement, to file an Application for Dispute Resolution seeking an Order that the amount be increased, or that the use of the laundry facilities was a material term.

I find that the Landlord terminated the laundry facilities in accordance with the provisions of the Act and that the Tenant chose to give notice to end the tenancy rather than make an Application for Dispute Resolution. I find that the Tenant did not provide sufficient evidence of the actual amount required to compensate her for the loss of use of laundry facilities at the rental unit. The Tenant's application for compensation with respect to the loss of laundry facilities is dismissed.

Most of the Tenant's concerns with respect to loss of peaceful enjoyment centered around events that took place more than 2 years ago. I accept the Tenant's submission that she was upset about the removal of the laundry facilities; however, as I stated above the Tenant did not take steps to negotiate with the Landlord or to file an Application for Dispute Resolution. I find that the Tenant chose to move instead. I do not find that the Landlord constructively evicted her.

Therefore, I dismiss the Tenant's application for recovery of moving costs and for compensation for loss of quiet enjoyment.

The Tenant's application is dismissed and therefore I find that she is not entitled to recover the cost of the filing fee from the Landlord.

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: December 16, 2013

Residential Tenancy Branch

