



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; her three witnesses; both landlords; their legal counsel; and their one witness. The tenant also had two other witnesses who were not heard and the landlord had one witness who was not heard.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for a wrongful eviction and for harassment and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the parties on December 30, 2012 for a 1 year fixed term tenancy beginning on March 1, 2013 for a monthly rent of \$1,500.00 due on the 1st of each month with a security deposit of \$750.00 and a pet damage deposit of \$250.00 paid. The tenancy ended on November 7, 2013.

The parties agree that several 1 Month Notices to End Tenancy for Cause were issued to the tenant on or after October 6, 2013. The first notice presented to the tenant was issued by the landlord on October 6, 2013 with an effective vacancy date of November 7, 2013 and cited the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; the tenant has caused extraordinary damage to the unit or property; and the tenant has not done required repairs of damage to the unit.

The next two 1 Month Notices still dated October 6, 2013 by the landlord show an effective vacancy date of November 30, 2013 and cite the cause to end the tenancy is

that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The tenant submits that the incidents to why the landlords may have wanted to end the tenancy occurred in July 2013 and the landlord should not end the tenancy in October/November for these events. In addition the tenant submits that she had not caused any damage to the rental unit or failed to make any repairs. The tenant submits that the landlord wanted to end the tenancy so that their friends could move into the rental unit.

Despite raising the issue with the incorrect effective date the tenant obtained alternate accommodation and prepared to move out by November 7, 2013. The tenant submits that after she was issued the Notice to End Tenancy the landlord harassed her until she vacated the rental unit.

The tenant has provided into evidence several text messages from October 6, 2013 onward. From these I note the following messages:

Date	From	Content
October 6, 2013	Tenant	Long message regarding Notice to End Tenancy
October 12, 2013	Landlord (2)	Requesting mail and stating will be attending the property to clean up yard
October 12, 2013	Tenant (2)	Long message regarding circumstances and tells landlord to leave her alone
October 12, 2013	Landlord (2)	Responding to points made in tenant's messages
October 13, 2013	Tenant	Advising landlord not to threaten her
October 17, 2013	Landlord	Seeking confirmation of receipt of forwarding address
October 23, 2013	Landlord	Trying to set up move out inspection time
November 4 and 5 2013	Both	Short messages regarding time for inspection.

The tenant submits also that on at least 2 occasions she believes the landlords entered the rental unit without her permission. She submits that at one time her daughter was afraid to enter the house when the tenant was not there and went to a neighbour's house because she thought someone had been in the house.

The tenant and her witness submit that after they had cleaned the carpets and locked up the house near the end of the tenancy they went back the next day and found that the baseboard heaters had been turned up to heat the house and then turned down again. They state that the heaters were warm to the touch.

The tenant seeks compensation in the amount of \$5,400.00, for a wrongful eviction; harassment and entering the rental unit without the tenant's permission.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Put the landlord's property at significant risk;
- b) The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property; or
- c) The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time.

Section 47(4) allows a tenant to dispute a notice given under Section 47 within 10 days of receiving such a notice. Section 47(5) states that if a tenant does not make an Application for Dispute Resolution seeking to cancel the notice they are conclusively presumed to have accepted the tenancy ends and must vacate the rental unit.

If the tenant felt any of the notices to end tenancy issued by the landlord on or after October 6, 2013 did not comply with the requirements set forth under the *Act* her remedy was to apply to have the notice cancelled.

As the tenant did not dispute the notice she is deemed to have accepted the notice and did vacate in compliance with the notice. I therefore find that without regard for the reasons the landlord's issued the notice the tenant accept it and moved out as a result. I further find that the tenant cannot now seek compensation for something she did not attempt to have canceled or dispute in accordance with the *Act*.

In relation to the tenant's claim for compensation for harassment, I find landlords had every right to attempt to schedule a move out condition inspection and confirm any

dates that the tenant intended to move out, especially since it was the tenant who informed the landlords that that had issued a notice with an incorrect effective vacancy date.

I also find that it was the tenant who engaged in long and unnecessary text messages that were argumentative and despite her asking the landlord to leave her alone it was the tenant who responded and engaged in the various text messaging.

And finally in relation to the tenant's claim for compensation because the landlords had entered the rental unit on at least two occasions I find the tenant has failed to provide any evidence that anyone entered the rental unit at all on either occasion. Even if I were to accept that someone had entered the rental unit on those occasions the tenant has provided no evidence that it was the landlords who had entered.

Based on the above, I find the tenant has failed to provide sufficient evidence that the landlord has violated the *Act*, regulation or tenancy agreement or that as a result the tenant has suffered any loss.

Conclusion

Therefore, I dismiss the tenant's Application in its entirety.

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: January 21, 2014

Residential Tenancy Branch

