



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Belmont Property
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss.

The tenant and the landlord attended the telephone conference call hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter both parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-The tenant introduced a witness, and I instructed the tenant that after the witness was sworn in, the witness should depart the room and area where the tenant was testifying so that the witness could not hear any testimony. The tenant agreed.

When the witness was later called to testify, the tenant immediately told the witness to come forward, which suggested that the witness had been present for the entirety of the hearing.

As I find the witness was not excluded from hearing the parties' earlier testimony, I declined to allow the witness to testify.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation?

Background and Evidence

The undisputed evidence shows that this tenancy began on September 15, 2011, ended on May 16, 2013, and the monthly rent at the end of the tenancy was \$750.

The tenant's monetary claim is \$1500, which she claims is the compensation she is entitled to for having received a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice"), which was not issued in good faith, as alleged by the tenant.

In explanation, the tenant said that she received from the landlord a 2 Month Notice on or about April 24, 2013, with a stated effective end of tenancy date of July 1, 2013.

The Notice, a copy of which was submitted by the tenant, listed as reason for issuing the Notice was that the landlord had all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant submitted that at the time the Notice was issued, the landlord did not have any permits or approvals to perform any work, as shown by her evidence, which was a report from the municipality noting that there had been no applications for a building permit for renovations and/or construction relating to this property.

In response, the landlord submitted that there was work needed on the rental unit, but that the tenant kept preventing the work from being performed, creating the necessity of issuing the tenant a 2 Month Notice.

The landlord submitted a list of itemized work done on the rental unit, and said that all the work was cosmetic not structural, such that, although vacant possession was needed, no permits were required for this type of renovation.

The landlord submitted that there was no rewiring or new plumbing, only that the electrical switch plate covers were replaced, along with the drywall, new cupboards and countertops, new carpet, new window covering, new bathroom, and new sub flooring.

According to the landlord, there was no plumbing involved.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The tenant is seeking monetary compensation under section 51 of the Act, which allows a tenant to receive compensation equivalent to double the amount of monthly rent in the event they receive a 2 Month Notice pursuant to section 49 of the Act, and the landlord has failed to take reasonable steps to accomplish the stated purpose listed on the Notice or if the rental unit has not been used for the stated purpose for at least 6 months within a reasonable time after the stated effective date.

In the case before me, I find the tenant has failed to prove that the type work performed on the rental unit by the landlord required permits or approvals from a government entity. I also find that the tenant did not question whether the work was performed or that vacant possession was needed to perform the work, and I therefore cannot find that the landlord did not issue the Notice in good faith.

Due to the tenant's insufficient evidence, I find that she failed to prove the landlord has violated the Act or the tenancy agreement. As a result, I dismiss the tenant's application, without leave to reapply.

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: February 04, 2014

Residential Tenancy Branch

