



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OLC, O, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking the an order to force the landlord to comply with the Act.

The tenant amended the application to include a claim for compensation for damage or loss under section 67 of the Act, Regulation or tenancy agreement;

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

At the outset of the hearing it was established that the tenant had since vacated the unit on February 26, 2014 and the security deposit was already refunded minus agreed-upon expenses incurred by the landlord.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation?

Background and Evidence

The tenancy began in September with current rent of \$700.00. The tenant testified that the landlord had issued a Notice to end the tenancy, but did not utilize the approved form as required under the Act.

The tenant testified that, although she was entitled to disregard the noncompliant eviction Notice, given that it was not enforceable under the Act, she was nonetheless forced to move out by the landlord's disruptive conduct that the tenant believed was aimed solely at driving her out. The tenant testified that the landlord repeatedly stayed

up at night making excessive noise and doing things to interfere with the tenant's quiet enjoyment of her home. The tenant pointed out that this harassing conduct forced the tenant to move out, despite the unenforceable Notice, and caused the tenant to incur \$250.00 moving costs, which is being claimed against the landlord.

Submitted into evidence was a copy of the landlord's self-generated one-month eviction notice, which was not completed on an approved form, a copy of an invoice from a moving contractor confirmed the tenant's \$250.00 moving costs and written testimony from the tenant.

The landlord acknowledged that she had acted in a manner aimed at convincing the tenant to move out, because she didn't feel safe.

Analysis

Only the evidence and testimony relevant and material to the issues under dispute and the findings in this matter are described in this decision.

In regard to a monetary claim for loss of quiet enjoyment and for the costs of moving, I find that an Applicant's right to claim damages from the other party is dealt with under sections section 7 and 67 of the Act.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for any damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under the circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act, agreement or an order,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the claimant; that being the tenant; to prove the existence of the damage/loss and that it stemmed directly from a contravention of the Act, on the part of the respondent.

Section 28 states that a tenant is entitled to quiet enjoyment including, but not limited to:

- (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.

I find that under the Act, a landlord is expected to take reasonable measures to ensure that the quiet enjoyment of a tenant is not violated.

In case law, in order to prove an action for a breach of the covenant of quiet enjoyment,

I find that the landlord did not have the right to interfere with the tenant's quiet enjoyment of the suite by doing things to bother the tenant in an effort to convince the tenant to move out.

In this instance, I find that the tenant had dutifully paid her rent in accordance with the Act but suffered significant interference and unreasonable disturbance due to the actions of the landlord. I find that the tenancy was devalued for the tenant during the month of February 2014 and this violates the landlord's obligation under the Act and agreement. For this reason, I find that the tenant is entitled to a retro-active rent abatement of 25% for the month of February 2014 and grant the tenant compensation of \$175.00 reflecting the loss of value to the tenancy.

In regard to the tenant's claim that she was forced to move despite the landlord's failure to issue a proper Notice under the Act, I accept the tenant's testimony that she could no longer stay in the unit under the circumstances deliberately created by the landlord. For this reason, I find that the tenant's claim for moving costs meets all elements in the test for damages and I find the tenant is entitled to compensation of \$250.00 for moving costs.

I find that the tenant is entitled to compensation in the amount of \$425.00 comprised of \$175.00 rent abatement for the month of February 2014 and \$250.00 for the moving costs.

I hereby grant the tenant an order under section 67 for \$425.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is successful in the application and is granted a monetary order for devalued tenancy and moving costs.

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: March 31, 2014

Residential Tenancy Branch

