



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNSD, MNDC

Introduction

This hearing dealt with a tenant's application to dispute an additional rent increase; and, the tenant's request for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement and return of the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant stated she was withdrawing her request for return of the security deposit in recognition of the mess she left at the rental unit when she vacated. I have amended the tenant's application accordingly and I do not give the tenant leave to reapply for return of the security deposit.

The tenant did not receive the landlord's evidence package although it was sent to her at her forwarding address via registered mail. The landlord submitted that the evidence package was returned by Canada Post with the notation "moved" appearing on the envelope. The landlord also submitted that mail previously sent to the tenant via registered mail was returned as "refused" by the tenant. The refused package included a Notice of Final Opportunity to Schedule a Condition Inspection. The tenant acknowledged that she refused the first registered mail package but denied writing "moved" on the second package.

In keeping with the principles of fairness, I excluded the landlord's evidence package from further consideration and informed the parties that the landlord would be permitted the opportunity to provide their position verbally during the hearing.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The month-to-month tenancy commenced September 1, 2013 and the tenant paid a security deposit of \$400.00.

The landlord also owns a store and the tenancy agreement contemplates that the tenant may work in the landlord's store and that her hours of work would be compensated at the hourly rate of \$10.25 and deducted from rent payable up to a limit of \$300.00 per month.

Clause 2 of the tenancy agreement stipulates that rent is \$1,100.00 per month. Clause 3 provides that the dollar amount that can be worked in lieu of rent will be \$300.00 and that the days worked will be determined by both parties' and will be mutually agreed upon. Clause 4 stipulates that the base rent of \$800.00 is due on or before the first day of each month.

The last time the tenant worked in the landlord's store was in late October 2013. On November 1, 2013 the landlord's spouse advised the tenant that she would no longer be working in the store and that rent of \$1,100.00 was due. Shortly thereafter, the landlord requested return of the store key from the tenant via email. The landlord's spouse then attended the rental unit and verbally requested the key for the store. The tenant refused to give it to the landlord's spouse. The landlord and her spouse returned to the property with the police in attendance and at that time the tenant returned the store key to the landlord.

The tenant paid \$800.00 for each month up to and including December 2013. On December 4, 2013 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door indicating rent of \$790.50 was outstanding as of December 1, 2013 and a stated effective date of December 15, 2013. The tenant did not file to dispute the 10 Day Notice and vacated the rental unit by December 15, 2013.

Tenant's position

The tenant is seeking return of one-half of the monthly rent she paid for December 2013 and moving costs since she vacated the rental unit in mid-December 2013. The tenant

had not provided any documentation to support the amount claimed for moving costs and I dismissed that portion of her claim summarily. With respect to the tenant's request for return of one-half of the rent paid for December 2013 I was provided the following submissions.

The tenant's advocate submitted that the tenancy agreement is ambiguous with respect to the tenant's obligation to pay rent and the ambiguous terms should be interpreted in such a manner so as to benefit the tenant. The tenant's advocate submitted that the monthly rent is \$800.00 and the landlord increased the rent to \$1,100.00 in a manner that does not comply with the Act. Nor, did the landlord give sufficient notice to end the employment arrangement.

The tenant explained that she chose not to dispute the 10 Day Notice as she felt too emotionally unsafe to remain in the unit. The tenant attributed her feeling of lack of emotional safety to her pre-existing medical conditions; the breakdown in friendship between her and the landlord; and, the landlord's violation of the Act with respect to harassment and unauthorized entry.

I cautioned the tenant that my jurisdiction is limited to the Residential Tenancy Act and I asked the tenant to limit her submissions to points relevant to such. With respect to the tenant's assertions that the landlord violated the Act, causing her to move out in mid-December 2013 and not dispute the 10 Day Notice, the tenant provided the following submissions:

1. In October 2013 the landlord and her spouse attended the rental unit to show the tenant how to operate the thermostat. The tenant permitted the landlord entry but pointed out that she had not received a written 24 hour notice before hand.
2. The landlord attended the property with the police in order to retrieve the store keys despite previous instructions for the tenant to leave the key in the mailbox.
3. The landlord's spouse changed the light bulbs on the exterior motion detector and then replaced the motion detector without giving the tenant a 24 hour notice of entry. The tenant acknowledged that the landlord's spouse did not enter the rental unit in order to replace the light bulbs or the motion detector and that the residential property consists of two rental units.

Landlord's response

The landlord submitted that rent for the rental unit was set at \$1,100.00 per month, with an agreement that up to \$300.00 may be worked off by working in the landlord's store based upon hours mutually agreed upon. In negotiating the terms of tenancy

agreement, and in particular the agreement that hours worked in the store would be by mutual agreement, it was contemplated that the tenant may not be available to work in the store as she intended to operate her own business.

The landlord explained that the \$790.50 that appears on the 10 Day Notice was calculated as the monthly rent at the rate of \$1,100.00 less payments of \$800.00 per month and less compensation for hours worked by the tenant in the landlord's store. The landlord provided a written calculation to the tenant outlining how this amount was calculated.

The landlord was of the position the tenant still owes her for rent and that the tenant's choice to not pay the rent owed and vacate the rental unit by the stated effective date is not a basis for the landlord to compensate the tenant for moving out. With respect to the landlord's attendance at the property, by herself or her spouse, the landlord submitted the following responses:

1. The tenant informed the landlord that she did not know how the thermostat worked. The landlord offered to come over for a social visit and show the tenant how to operate the thermostat. Upon arriving at the rental unit the tenant invited the landlord and her spouse in and during that visit the tenant was shown how to operate the thermostat.
2. The landlord was concerned about the tenant's refusal to return the store key especially since their friendship and employment relationship had broken down and the tenant had refused to give it to her spouse. The landlord also felt unsafe around the tenant so the landlord asked the police to accompany her to keep the peace while she retrieved the store key from the tenant.
3. The tenant had complained that the exterior motion detector light fixture was not working and the landlord asked her spouse to investigate and make necessary repairs.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verify the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Where a tenant receives a 10 Day Notice to End Tenancy for Unpaid Rent and the tenant is of the position the tenant does not owe the landlord rent, the tenant's remedy is to file an Application for Dispute Resolution to dispute the 10 Day Notice. The tenant did not do so in this case but moved out of the rental unit by the effective date of the Notice. The tenant submitted that she felt she had to vacate the rental unit due, in part, to the landlord's violations of the Act. I have considered whether there is sufficient evidence to conclude the landlord violated the Act and that such violations provided the tenant no reasonable alternative but to vacate the rental unit.

The tenant pointed to a lack of written 24 hour notice on three occasions. The Act provides that giving a tenant a written 24 hour notice is one of the permissible ways a landlord may enter a rental unit. However, a written 24 hour is not required in every circumstance. For instance, a landlord may enter a rental unit where a tenant gives a landlord verbal consent to enter a rental unit. Having heard from both parties that they had a friendship early in the tenancy, I find it likely that the tenant had given the landlord verbal consent to enter her unit when she invited the landlord in during the month of October 2013 for the purpose of a social visit and to show the tenant how to operate the thermostat.

I did not hear evidence the landlord entered the rental unit when the landlord attended the property with the police in November 2013. Attending the property and knocking on the tenant's door is not a violation of the Act. Further, the tenant had an opportunity to avoid a visit to the property by the landlord if she had only given the key to the landlord's spouse when he attended earlier that day. I find the tenant's refusal to give the key to the landlord's spouse necessitated a subsequent visit to the property by the landlord.

Finally, I find the repair of the exterior light fixture by the landlord's spouse does not constitute a violation of the Act by the landlord. The light fixture was repaired without

entering the rental unit. Further, having heard there are multiple units on the residential property I find the exterior areas are common property. A landlord does not need to obtain the tenant's verbal consent or give a tenant a written 24 hour notice in order to access common areas.

In light of the above, I find the tenant chose not to exercise a remedy available to her if she was of the position she did not owe the landlord rent and the tenant failed to establish that moving out of the rental unit by December 15, 2013 was due to harassment or unauthorized entry by the landlord. Therefore, I dismiss the tenant's claims against the landlord.

Conclusion

The tenant's claims against the landlord have been 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: April 22, 2014

Residential Tenancy Branch

