



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

LANDLORD: OPC, MND, MNSD, MNDC, FF O
TEANNT: CNC, MNDC

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession, monetary order for compensation for damage to the unit, site or property, for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit, to recover the filing fee for this proceeding and for other considerations.

The Tenant filed to receive an order to cancel the Notice to End Tenancy and for monetary compensation for loss or damage under the Act, regulations or tenancy agreement.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on April 24, 2014, in accordance with section 89 of the Act. The Tenant said she did not receive the Landlord's hearing package. The Landlord provided tracking information that showed the package was delivered but the Tenant did not accept the package. I accept the Landlord served the Tenant as required by the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on March 26, 2014, in accordance with section 89 of the Act. The Landlord said the Tenant address the package incorrectly but she did receive the Tenant's hearing package on April 11, 2014. I accept the service of the Tenant's hearing package as the Landlord had enough time to prepare for the hearing.

At the start of the conference call the Tenant said she had moved out of the rental unit on April 30, 2014. Consequently the Landlord's application for an Order of Possession and the Tenant's application to Cancel the Notice to End Tenancy are no longer pertinent as the tenancy has ended. I cancel the Landlord's application for an Order of Possession and the Tenant's application to cancel the Notice to End Tenancy.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so how much?
3. Is there a loss or damage to the Landlord and if so how much?
4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is the Landlord entitled to retain the Tenant's deposits?

Tenant:

1. Is there a loss or damage to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for the loss or damage and if so how much?

Background and Evidence

This tenancy started on February 1, 2014 as a month to month tenancy. Rent was \$950.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$475.00 on January 15, 2014 and a pet deposit of \$200.00 on February 1, 2014. The Tenant rented the lower unit in a house owned by the Landlord.

The Tenant said she gave the Landlord written notice by email on April 11, 2014 to end the tenancy on April 30, 2014. The Landlord said she accepted the Tenants' Notice to End the Tenancy and the tenancy ended on April 30, 2014.

The Tenant continued to say that they moved out of the rental unit because she felt harassed and she had lost the quiet enjoyment of living in the rental unit. the Tenant said the Landlord's agent A.C. watched her when she was out in the yard and this made her very uncomfortable. The Landlord's agent lived in the upper unit of the rental complex. As well the Tenant said the Landlord wrote her numerous emails accusing her of smoking inside the rental unit. The Tenant said she has never smoked in the rental unit, but she does smoke medical marijuana and cigarettes outside the unit. The Tenant continued to say the constant watching by the Landlord's agent and the flow of emails from the Landlord caused her medical conditions to worsen to the point that she was stressed. The Tenant provided a witness Dr. M. who testified that the Tenant was under his care from approximately mid January, 2014 for stress related syndromes. Dr. M. said he had prescribed medical marijuana for the Tenant and he had seen her symptoms increase during the tenancy. The Landlord asked Dr. M. if the Tenant had these stress conditions prior to the tenancy and the Doctor said yes, but he had only

started to see the Tenant a couple of weeks before the start of the tenancy. The Tenant said she had to move out of the rental unit because she could not deal with the Landlord's agent watching her or the email from the Landlord any more.

The Tenant called a witness N.D. to testify. Witness N.D. said he was the Tenant's son and he saw his mother having a difficult time during this tenancy. Witness N.D. said his mother did not smoke in the rental unit she always smoked outside. The Landlord asked the witness N.D. if there had been any altercations between the Tenant or himself and the Landlord or the Landlord's Agent. Witness N.D. said no there had not been any altercations between the Landlord or the Landlord's Agent and himself or his mother.

The Tenant said she is requesting \$750.00 for loss of quiet enjoyment of the rental unit and \$2,500.00 for mental and emotional distress as well as her security and pet deposit to be returned and \$500.00 for moving costs.

The Landlord said that communication between her and the Tenant have been through email and she has not had any disagreements or harsh words with the Tenant. The Landlord also said the communications between her agent A.C. and the Tenant and her sons have been respectful. The Landlord continued to say the Tenant has not provided any evidence that the Landlord or the Landlord's agent A.C. have harassed her. The Landlord said she has emailed the Tenant not to smoke in the rental unit because there have been complaints from other tenants in the rental complex that the Tenant's smoke is coming into their rental unit. The Landlord said that when the complaints persisted she wrote the Tenant 3 warning emails and then the Landlord issued a 1 Month Notice to end the tenancy for breach of contract, significantly interfering and disturbing other tenants or adversely affecting other tenants. The Landlord said she was not harassing the Tenant but telling the Tenant that her smoking was affecting the other tenants in the building. The Landlord called 8 witnesses to give testimony about the Tenant's smoking. Witness K.M. said he smelled marijuana smoke in the upper unit but he did not see the Tenant smoking inside. Witness S.B. also said he smelled marijuana smoke in the upper unit although he did not see the Tenant smoking inside. Witness C.T. said he thought he smelled marijuana smoke inside the unit but not outside the unit and he had not see the Tenant smoking inside the rental unit. Witness F.P. said he had seen the Tenant smoking in the door way of her lower unit and he to smelled a strong smell of marijuana in the upper rental unit. Witness M.H. said her sister lived in the upper unit and she stopped visiting her at the rental unit because the smell of marijuana was to strong. Witness T.H. said she too smelled the marijuana smoke from the Tenant's unit as there was no smell outside, but inside the house smelled of marijuana. Witness L.H. said she had lived in the rental complex for 3 years and she too was bothered by the smell of marijuana smoke in her unit. Witness L.H. said that she smelled cigarette smoke as well and this complex is a no smoking complex inside the building. Witness A.C. said he too had lived in the house for 3 years and although he has not seen the Tenant smoke inside the rental unit he has been disturbed by the smell of marijuana in the rental complex. The Tenant said she smokes medical marijuana outside the rental unit 3 to 4 times a day and maybe the smoke goes into the upper unit through the

windows or doors when they are open. The Tenant said she does not smoke in the rental unit.

The Landlord continued to say that when she received the Tenant's application she filed a counter claim for \$3,000.00. The Landlord's claim was to keep the Tenant's security and pet deposit because the Tenant did not give proper notice to end the tenancy. The Landlord said the Tenant moved out April 30, 2014 and new tenants moved in May 1, 2014 so there was no lost revenue. As well the Landlord applied for lost wages while she prepared and participated in this hearing in the amount of \$850.38, to recover the filing fee of \$50.00 and the balance of her claim was for estimated damages that may result from this tenancy.

On questioning the Landlord said that she has not provided any evidence to support the lost of wages and the estimated work has not been done to date so there are no paid receipts to prove a loss from damages.

The Tenant said in closing that she never smoked in the building she always smoked outside and that the constant watching and email from the Landlord and her Agent forced her to move out. The Tenant requested compensation for her loss of quiet enjoyment and mental and emotional distress in the amount of \$3,500.00.

The Landlord said in closing there had never been an altercation between herself or her Agent and the Tenant or her sons and the Tenant has not provide evidence to prove her claims.

Analysis

With respect to the Landlord's application. The Landlord indicated that although the Tenant did not provide proper notice to end the tenancy the Landlord accepted the Tenant's notice and agreed to end the tenancy. As well the Landlord rented the unit on May 1, 2014 therefore the Landlord has not suffered any loss of rental income from the improper notice to end the tenancy from the Tenant. Consequently I find no evidence to award the Landlord monetary compensation for the improper notice given by the Tenant to end the tenancy. The Landlord's claim to keep the security and pet deposit for the improper notice to end the tenancy or for lost rental income is dismissed without leave to reapply.

Further for a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord said the damage claims in her application either have not been completed or she has not provided evidence to prove and verify the claims therefore I dismiss without leave to reapply the Landlord's claims for lost wages and for estimated or possible damages to be repaired in the future.

Consequently I dismiss the Landlord's application without leave to reapply.

With respect to the Tenant's application it is the applicant's responsibility to provide evidence to support the claims that are made. In this situation the Tenant and the Tenant's doctor said that the Tenant had a stress condition prior to the tenancy. It was the Tenant's responsibility to prove the Landlord was solely responsible for her the level of stress that made the Tenant feel she had to move out of the rental unit. From the evidence submitted and the testimony given I do not accept that the Landlord is solely responsible for the Tenant's condition. The Tenant had health conditions prior to the tenancy which could have contributed to the Tenant's stress issues. When evidence is not available to prove a claim then it is a situation of one party's word against the other party's word. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. I find the Tenant has not proven that her quiet enjoyment of the rental unit was loss solely due to the Actions of the Landlord or the Landlord's agent. As well the Tenant has not met the burden of proof that the Landlord's actions constituted harassment as the Tenant's own witness her son said that there had not been an altercation between the Landlord or the Landlord's Agent and the Tenant or the Tenant's sons. It appears that this tenancy had difficulty because of smoking issues and the smoking issue is not whether the Tenant smoked inside or outside the rental complex but that the smell from smoking marijuana disturbed other tenants and the Tenant did not correct her behavior to accommodate the other tenants. As a result I dismiss without leave to reapply the Tenants application and monetary claim of \$3,500.00 due to a lack of evidence to show the severity of the alleged harassment and that the Landlord was solely responsible for the Tenant's loss of quiet enjoyment of the rental unit.

Further the Landlord is order to handle the Tenant's security and pet deposits as required by the Act within 15 days of receiving this decision.

As the Landlord has not been successful in this matter I order the Landlord to bear the \$50.00 filing fee for his application, which she has already paid.

Conclusion

The Landlord's application is dismissed without leave to reply.

The Tenant's application is dismissed without leave to reapply.

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: May 13, 2014

Residential Tenancy Branch

