



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC

Preliminary Issues

Upon review of the evidence before me I noted that on March 6, 2014 a hearing was conducted in relation to this tenancy and a Decision was issued on March 17, 2014. A Review Consideration Application was subsequently filed and a Decision dated April 24, 2014 was issued granting a new hearing scheduled for June 18, 2014. The June 18, 2014 hearing has been adjourned to August 20, 2014.

Based on the above information, I advised both parties that I could not hear testimony that related to the matters pertaining to the above mentioned matters. Upon review of the Tenants' application that was currently before me, the Tenants confirmed that these matters were not related to the above mentioned hearings.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on June 2, 2014, by the Tenants to cancel a Notice to end tenancy issued for cause, and to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties appeared at the scheduled teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Both Tenants appeared during the course of this proceeding, however, N.L. provided the majority of the testimony on behalf of both Tenants. Therefore, for the remainder of

this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa.

Upon confirmation of receipt of evidence the Tenants confirmed they received the Landlord's evidence. The Landlord confirmed receipt of the Tenants' evidence except the hand written document dated June 1, 2014 which listed a previous file number. The Tenants testified that they served the Landlord with copies of all of their evidence.

Section 3.1 of the *Residential Tenancy Branch Rules of Procedure* provides that an applicant must serve the *Residential Tenancy Branch* and the other party with copies of any evidence they wish to rely upon at the hearing.

In this case the Landlord has testified that she was not served a copy of the Tenants' written statement dated June 1, 2014. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, because the Landlord has not received copies of the Tenants' June 1, 2014, written statement; I find that that written statement cannot be considered in my decision. I did however consider the Tenants' testimony and the other documents submitted by the Tenants.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Had the Tenants been served a 1 Month Notice to end tenancy for cause prior to making this application?
2. Have the Tenants proven entitlement to monetary compensation?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced in March 2010. The Tenants are required to pay rent of \$675.00 per month. Currently the rent plus \$30.00 payment for past due rent is being paid directly to the Landlord from Income Assistance in the amount of \$705.00 (\$675.00 + \$30.00). The Tenants paid \$325.00 as the security deposit at the onset of the tenancy.

The Landlord testified that she did not serve the Tenants a 1 Month Notice to end tenancy for cause. She pointed to the letter she wrote to the Tenants where she informed the Tenants that if they do not pay their rent she will issue them a 10 Day Notice.

The Tenant, N.L. testified that they are seeking \$675.00 compensation because the Landlord has been harassing them and for suffering and stress they suffered from the Landlord's actions. She argued that the Landlord has threatened to throw them out, she has phoned and let the phone ring 30 times, she shows up unexpected at their door, and then she harassing them by saying they do not have to pay June rent and then changed her mind and said they had to pay rent. The Tenant also alleged that the Landlord attempted to gain personal information about their income assistance and she is trying to get other tenants against them.

The Landlord testified that she is not harassing the Tenants. She admitted that she did call one time and let the phone ring a long time because she was trying to get a hold of the Tenants to make arrangements to bring a repair person to the unit. She stated that prior to making that call she had attended the unit, knocked and heard the Tenant(s) inside, but they refused to answer the door.

The Landlord submitted that the only times she has attended the unit or contacted the Tenants was in response to their requests for repairs, to bring service people to the unit, or to serve the Tenants documents in relation to the dispute resolution proceedings. She stated that she responds to the Tenants' requests for repairs by arranging over the telephone or in person the times agreed upon to attend. She pointed to the documentary evidence, which included copies of the letters she wrote the Tenants, and submitted that she was simply providing them with information regarding their payment of rent while waiting for the new hearing.

The Landlord confirmed that she receives payment for the Tenants' rent directly from Income Assistance. She said she contacted the Income Assistance office to obtain information about who she would have to return rent payments to, if ordered to do so by the Residential Tenancy Branch Arbitrator. She did not attempt to gather personal information about the Tenants.

The Landlord acknowledged that she spoke with other tenants when she asked for reference letters for evidence of the upcoming hearing. She said she did not discuss details about these matters with other tenants; rather, she only told them that they were involved in a dispute.

The male Tenant, B.W. took the phone from N.L. and testified that the Landlord has been bothering them non-stop by calling or knocking on their door. When asked when the last time the Landlord called or knocked, B.W. stated that he has not been at the rental unit for “awhile”. He said he could not say how long he was away for and he did not keep track of each time she called or knocked on his door. Then he simply stopped talking and handed the phone back to N.L.

In closing, N.L. stated that she feels violated and is only standing up for her rights.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

The evidence supports that at the time the Tenants filed their application for Dispute Resolution on June 2, 2014, the Landlord had not served them with a 1 Month Notice to end tenancy for cause. Accordingly, I dismiss the Tenant’s claim to have a 1 Month Notice set aside, without leave to reapply.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Sections 88 and 89 of the Act stipulate how documents must be served when required to be given to another party and include personal service.

In this case the Tenants have sought compensation alleging that the Landlord is harassing them when she attends the rental unit to serve documents, attempts to contact them by phone, when she writes letters, and when she contacted the Income Assistance office. The Landlord disputed all of the allegations and provided reasonable explanations for each time she contacted the Tenants or why she contacted the neighbors and the Income Assistance office.

Based on the foregoing, I find the Landlord has not breached the Act, as personal service is provided for under sections 88 and 89 of the Act. Furthermore, in the presence of the disputed verbal testimony, I find the Tenants have provided insufficient

evidence to satisfy their burden of proof for a monetary claim. Accordingly, I dismiss the Tenants' claim in its entirety, without leave to reapply.

I note that the evidence suggests that the parties had established a pattern of discussing access for maintenance or repairs to the unit. While discussing and mutually agreeing upon a time of entry works when a landlord tenant relationship is not stressed, it may become problematic when the relationship becomes adversarial. Therefore, I have copied section 29 of the Act to the end of this decision and caution the parties to become informed about their rights and obligations regarding access to the rental unit.

Conclusion

I HEREBY DISMISS the Tenants' application, 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: July 23, 2014

Residential Tenancy Branch

Section 29 of the *Residential Tenancy Act* provides as follows:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

