



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, MT, PSF, RP, RR, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for cause and for an extension of time to do so. The tenant also applied for a monetary order for compensation and the filing fee and for an order directing the landlord to provide services, carry out repairs and reduce rent.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The landlord served the notice to end tenancy for cause on June 06, 2014. The tenant moved out on June 29, 2014 without providing the landlord with written notice. The landlord expressed surprise that the tenant had already moved out prior to the date of this hearing to dispute the notice to end tenancy.

Since the tenant has already moved out, a large portion of her application is moot. Accordingly this hearing only dealt with the tenant's application for a monetary order for compensation and the filing fee.

Issues to be decided

Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy started in August 2007 and ended on June 29, 2014. The monthly rent was \$727.00 payable on the first of each month. At the start of the hearing, the landlord stated that the tenant had not paid rent for June 2014 and despite making application to cancel the notice to end tenancy, had moved out on June 29, 2014 without providing notice to the landlord.

The landlord stated that she had not yet received the keys to the unit and had served the tenant another notice to end tenancy for non payment of rent in July, by attaching the notice to the front door of the rental unit. The landlord stated that she had suffered a loss of income for July and August in addition to unpaid rent for June. Attempts at mediation failed when the tenant did not accept the landlord's offer of not making a monetary claim against the tenant for unpaid rent and loss of income in exchange of dropping her monetary claim against the landlord.

The tenant stated that during the tenancy the refrigerator started to have problems and as a result, the tenant lost a lot of groceries. The tenant provided information on the dates of complaints to the landlord and the dates that the landlord acted upon the complaints. The landlord did not provide any documentary evidence regarding her response to the complaints and could not recall the dates that she provided service to the tenant. The landlord stated that she was not in the office at the time of the hearing and this information was unavailable as it was located in the office. Since the landlord was not in a position to provide information on the details of the issue at hand, I will use the tenant's testimony in the making of this decision.

The tenant stated that the landlord responded immediately to every request except for the period of June 02 to June 23, 2014. The tenant agreed that the landlord had provided the tenant with compensation for lost groceries in the amounts of \$280.00, \$160.00 and \$140.00 for the months of March, April and May 2014.

The tenant is claiming a total of \$3,160.00 of which \$181.00 is for groceries and the balance is for the inconvenience she endured from the loss of use of the refrigerator.

Analysis

Based on the sworn testimony of the both parties, I find that the refrigerator was problematic for the period of March to June 2014. I have to determine whether the landlord was negligent in responding to the problem. Based on the documentary evidence of the tenant and verbal testimony of both parties, I find that the landlord acted on the complaints, in a timely manner, but provided refrigerators that did not function well. I further find that the use of the refrigerator was an essential service, which was not available to the tenant on and off for a period of approximately four months.

Residential Tenancy Policy Guideline# 22 states that where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent.

In this case I find that a breach of contract occurred resulting in a reduction of the value of the tenancy and therefore I find that the tenant is entitled to compensation for the periods that she suffered the loss of use of the refrigerator and for the cost of lost groceries. In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

In this case, the tenant endured this inconvenience on and off for about four months. The tenant agreed that she has received compensation for the loss of food for three months. Based on the testimony of the tenant I find it appropriate to award the tenant \$140.00 for the loss of groceries in June.

The *Residential Tenancy Policy Guideline #16* states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Based on the inconvenience caused by the loss of use of the refrigerator on and off during the last months of the tenancy, I find it appropriate to award the tenant \$100.00 for the inconvenience she endured due to the loss of use of the refrigerator. Accordingly the tenant has established a total claim of \$240.00.

The tenant has proven a portion of her claim and therefore I award the tenant a portion of the filing fee in the amount of \$25.00. Overall the tenant has established a claim of \$265.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I award the tenant a monetary order of \$265.00.

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: August 07, 2014

Residential Tenancy Branch

