



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, MNDC, OLC, O, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for:

- Retro-active rent abatement for loss of quiet enjoyment April to July 31, 2014,
- Moving costs including termination charges for cancelling internet and cable contracts, a the first month rent in a new unit,
- Loss of wages due to stress and attending hearings,
- Aggravated damages, and
- Return of the tenant's security deposit.

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 I found that the tenant vacated the rental unit on July 31, 2014. Therefore, the portion of the tenant's application seeking to cancel the One Month Notice to End Tenancy for Cause need not be determined as the matter is moot.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for loss of value to the tenancy?

Is the tenant entitled to costs of moving and relocating?

Is the tenant entitled to lost wages for stress and attending the hearings?

Is the tenant entitled to a refund of the security deposit?

Is the tenant entitled to aggravated damages?

Background and Evidence

The tenancy began August 1, 2012. The rent was 750.00 per month and a security deposit of \$375.00 was paid.

On June 12, 2014 a previous hearing was held on the tenant's application disputing a One Month Notice to End Tenancy for Cause, compensation for a malfunctioning refrigerator and a rent abatement for alleged harassment by the landlord. During that hearing the tenant accused the landlord's agent of monitoring her using a security camera. The tenant also alleged that the landlord issued the One Month Notice to End Tenancy for Cause as a reprisal. The tenant was successful in cancelling the One Month Notice and received an order for compensation for the loss of the refrigerator. The tenant's request for a rent abatement for the harassment was dismissed for insufficient evidence. The landlord was also ordered to cease monitoring the tenant and both parties were ordered to restrict their communications only to written form.

The tenant has now applied requesting \$500.00 for the cost of moving, return of the \$375.00 security deposit, \$750.00 for the first month rent of her new residence, \$807.45 lost wages for stress and attendance at the previous hearing and this hearing, \$900.00 Telus and internet early contract termination fee, \$3,000.00 rent abatement from April to July 2014 for loss of quiet enjoyment and aggravated damages of \$5,000.00. However, the tenant has capped the entire monetary claim at \$5,000.00 in total.

The tenant testified that the landlord has breached the previous order on 4 occasions by confronting the tenant and encouraging others to harass the tenant on his behalf. The tenant testified that she has felt it necessary to call police more than once and has filed reports. The tenant testified that, although she had originally intended to dispute the landlord's latest One Month Notice to End Tenancy for Cause she felt she had no choice but to move out because she has been kept in a state of constant fear and

anxiety. The tenant pointed out that the landlord had violated the orders issued in the previous decision.

The landlord disputed the above claims and stated that they have fully complied with the previous orders. The landlord pointed out that the tenant and her associate have repeatedly confronted the landlord's agent and have stalked him and takes the position that it's the tenant who has violated the previous order to communicate only in writing. The landlord testified that the tenant's conduct resulted in them issuing another One Month Notice to End Tenancy for Cause on July 9, 2014 effective August 31, 2014, but the tenant chose of her own free will to vacate on July 31, 2014.

Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances. The evidence 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 or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
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 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.

Rent Abatement for Loss Quiet Enjoyment

In regard to the tenant's claim for a rent abatement from April to July 30, 2014, I find that the portion of the claims for a rent abatement for the period of the tenancy from April 2014 to June 1, 2014 was already heard and determined at the previous hearing and cannot be revisited.

In regard to the claim for the portion of the rent abatement from June 1, 2014 to the end of July 2014, I find that I am at liberty to determine this matter as it has not already been heard.

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, to prove an action for a breach of the covenant of quiet enjoyment, the tenant would have to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions, or inaction by the landlord, which permitted interference by an external force within the landlord's power to control. The level must be sufficient to render the premises unfit for occupancy for the purposes for which they were leased.

I find that the term "*unreasonable disturbance*" is a subjective determination that may widely vary from one individual to another. In this situation, I accept the tenant's position that the landlord does not have the right to gratuitously monitor the tenant's current daily activities and to do so may violate section 28 of the Act.

I find that cameras used for the sole purpose of security would not necessarily entail a manager actively viewing people coming and going at his or her pleasure. Security cameras are normally installed to deter crime and for use in case a crime has been committed. The security tapes are usually used, after the fact, to review activities for the purpose of a criminal investigation.

I find that the cameras employed for "live" ongoing monitoring, in a surveillance-like manner, should be operated by a professional security organization with licensed security officers for a valid purpose. Live cameras used by landlords or their agents to actively observe tenants in real time, whether at their own door or

even at the entrance of the building, would in most cases be considered intrusive by tenants and their guests.

In any case, without making a conclusion that this landlord did, or did not, aim a camera at this tenant's door, I find that having video equipment that is easily adjusted to focus anywhere but on the entry door and that can also be accessed at will by the landlord's building manager, invites a genuine risk of abusing a tenant's right to privacy under the Act.

I find that the landlord has denied continuing this practice, while the tenant alleges that the landlord has still been observing her and her guests.

Based on the evidence before me and on a balance of probabilities, I accept the tenant's evidence that her tenancy contract was devalued to a certain extent by the landlord's inappropriate conduct towards the tenant and the uncomfortable environment intentionally created for this tenant throughout the complex. For this reason, I find that the tenant is entitled to a rent abatement of 20% for the month of June 2014 in the amount of \$150 and 20% abatement July 2014 in the amount of \$150.00, for loss of quiet enjoyment and devalued tenancy. I grant the tenant compensation from the landlord in the amount of \$300.00.

Moving costs and Cable/Internet Penalty

In regard to the tenant's claim for \$500.00 for the cost of moving and the \$900.00 Telus and internet early contract termination fee, I find that it was the tenant who terminated the tenancy and felt it necessary to move. I accept the tenant's explanation that she could no longer tolerate living in the unit, given the circumstances. However, I find that this was due to an extremely deteriorated relationship between the landlord and the tenant, that had progressed to the point of intolerance. I do understand that the tenant felt forced to move and considered that she had no choice. That being said, I find that the cost of moving would always be paid by a tenant at some point when a tenancy ends, regardless of how long they remain living in their unit. In addition, because the tenant terminated her tenancy instead of continuing to challenge the landlord's One Month Notice to End Tenancy for Cause, there is no way to know whether or not the landlord would have been successful in ending the tenancy for cause. I find that the claims for moving costs and cable/internet penalties must be dismissed.

Reimbursement of First Month Rent

In regard to the tenant's claim for reimbursement of \$750.00 for the first month rent of her new residence, I find that the tenant would have to pay rent regardless

of where she lived for the month of August 2014. Therefore, this claim does not satisfy any element of the test for damages and must be dismissed.

Claim for Loss of Wages

In regard to the tenant's claim for lost wages of \$807.45 for stress and time she spent in attending this and the previous hearing, I find that the Act does not permit compensation for time spent in preparing and attending a hearing. I also find that the tenant's evidence to support the claim for lost wages is not sufficient to meet any element of the test for damages and the claim must be dismissed.

Aggravated Damages

In regard to the tenant's claim for aggravated damages of \$5,000.00, I find that an arbitrator may grant aggravated damages in compensation for physical inconvenience and discomfort, pain, grief, humiliation, loss of self-confidence, mental distress and other intangible losses, which are considered to be "non-pecuniary" in nature. Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful, reckless or indifferent behaviour.

I find that the conditions giving rise to this kind of award must be sufficiently significant in depth, or duration, or both, representing a profound influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

In the case before me, I find that there are not sufficient grounds to award aggravated damages in this instance. I find that even severe inconvenience, temporary annoyances or stress suffered by this party would not give rise to aggravated damages. In this situation, I find that the transgressions were not sufficiently significant in depth, nor duration to warrant aggravated damages.

Accordingly, the claim for \$5,000.00 aggravated damages must be dismissed.

Security Deposit

In regard to the tenant's claim for the return of their security deposit, I find that the landlord is required to comply with section 38 of the Act which states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy. If the permission is not in written form and signed by the tenant, then the landlord has no right to keep the deposit.

However, a landlord may be able to keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord makes an application for dispute resolution and successfully obtains a monetary order to retain the amount from the deposit to compensate the landlord for proven damages or losses caused by the tenant.

The landlord must either make the application or refund the security deposit within 15 days after the tenancy had ended and the receipt of a written forwarding address.

I find that the tenant has now provided the landlord with a forwarding address in this application and the landlord is therefore obligated to refund \$375.00 to the tenant without further delay to the address given on the application. For this reason I find that the tenant is entitled to a monetary compensation of \$375.00.

Based on the evidence discussed above, I hereby grant the tenant a monetary order in the amount of \$725.00, comprised of \$300.00 retroactive rent abatement for loss of quiet enjoyment and devalued tenancy, \$375.00 representing the refund of the tenant's security deposit and the \$50.00 cost of this application.

Conclusion

The tenants are partially successful in the application and the 10-Day Notice to End Tenancy for Unpaid Rent is cancelled. The tenant is also granted a retro-active rent abatement for past loss of quiet enjoyment. Terms of the tenancy agreement with respect to the rental rate and utility payments are clarified and the parties are ordered to communicate only in writing.

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: September 23, 2014

Residential Tenancy Branch

