



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, CNC, FF, LAT, MNDC, MNSD, MT, O, OPT, RR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order allowing access to (or from) the unit or site for the tenant or the tenant's guests; for an order cancelling a notice to end tenancy for cause; for an order authorizing the tenant to change the locks to the rental unit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order allowing the tenant more time to make an application to cancel a Notice to End Tenancy; for an order of possession of the rental unit or site in favour of the tenant; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of the application.

The tenant and both landlords attended the hearing and all parties gave affirmed testimony. The landlords were also represented by legal counsel. The landlords provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the tenant, however no evidentiary material was provided by the tenant.

The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

At the outset of the hearing, the parties agreed that the Notice to End Tenancy given by the landlord is cancelled, and therefore, the tenant's applications for more time to dispute the notice, for an order cancelling it, and for an order of possession of the rental unit are hereby dismissed, by consent. The tenant also withdrew the applications for a monetary order for return of all or part of the pet damage deposit or security deposit, for an order allowing access to (or from) the unit or site for the tenant or the tenant's guests; and for an order that the tenant be permitted to change the locks to the rental unit.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of quiet enjoyment of the rental unit or site?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testified that this fixed-term tenancy began on April 1, 2014 and expires on March 31, 2015. Rent in the amount of \$1,000.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$500.00. A copy of the written tenancy agreement has been provided by the landlords.

The tenant further testified that he is no longer staying in the rental unit as a result of the notice to end tenancy issued by the landlord, and is currently renting a room from his girlfriend, who is renting and subletting a room to the tenant, but the tenant is still paying rent for this rental unit. Their tenancy agreement is verbal and the tenant basically moved in there in late August or early September. It has been a gradual process and all his major furniture is still in the rental unit.

On August 7, 2014 the landlords served the tenant with a 1 Month Notice to End Tenancy for Cause indicating that the tenant, or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, based on the fact that the tenant's baby was crying. The tenant could not afford to be homeless due to a shared custody arrangement and received advice from the Residential Tenancy Branch that after disputing the notice, it would be the Decision of the Arbitrator to determine whether or not the notice would be cancelled, so the tenant could not take any chances and found alternate accommodation. The landlords have sold the home and the tenant believes that they entered into a tenancy agreement with the tenant knowing full well that their intention was to sell. The landlords didn't complain about the baby crying until after the house was listed for sale, and the tenant believes the notice was issued to facilitate a sale. He stated that the eviction was a scam to get rid of him in order for a new owner to choose whether the tenant stays or not. He stated that the landlords had asked at the outset if the tenant wanted a 6 or 12 month lease and the tenant advised he wanted 12 months. Further, one of the landlords says he was ill, but knew that at the time the tenancy was entered into and knew the landlords intended to sell. The landlords' Realtor told the tenant that the Realtor was good at getting new landlords to keep current tenants; then started to complain about the tenant's baby crying.

The rental unit did sell, and the tenancy agreement carries on with the new landlord, whom the tenant met personally in mid-August, 2014.

The tenant wants to end the tenancy and asks for an order that the landlords compensate the tenant the equivalent of 5 month's rent from November, 2014 to March, 2015, being the balance of the term of the tenancy, or alternatively, what it would cost the tenant to get out of the lease or compensate the tenant for issuing an eviction notice for no reason. The landlords should pay the tenant's rent or compensate him for tort because the eviction was based on a crying baby.

The tenant also testified that one of the landlords told the tenant in a text message that the tenant could get internet at the tenant's expense and the landlords would deduct the full cost from the rent but would not pay the installation fee. After the tenant called Shaw Cable, the other landlord said the tenant would be compensated a limited amount to a maximum of \$29.00 per month. The tenant was concerned about taxes and other fees. The tenant seeks an order requiring the landlords to reimburse the tenant about \$40.00 per month, or however much it will cost, including all fees. The tenant does not know what those amounts are because Shaw Cable was not able to tell him, and he doesn't yet have a bill.

The tenant's application is for \$4,900.00, and the details section of the application states, "There has been a significant level of harassment, bothering, and inconsistent/dishonest behavior and communication." It also states that the tenant seeks a rent reduction which includes all costs associated with Shaw internet, including but not limited to monthly fees, administration fees and installation fees, as well as damages in the amount of all the rent paid to date because the tenancy was entered into with fraudulent intentions.

The tenant also stated during cross examination that the notice to end tenancy was issued 5 months after the tenancy began.

The first landlord testified that the landlords decided in mid-July, 2014 to sell because his multiple sclerosis had worsened and the landlords needed a 1-level, no stair house. The landlord was falling 2 or 3 times per week, which was an increase.

The landlord further testified that the listing advertisement, a copy of which has been provided specifically states: "Realtor Remarks: Please allow 24 hours notice to show. Suite viewed on second showing only. Tenant has a fixed term lease until April, 2015 and would like to stay."

The landlord also testified that the tenant's child was at the rental unit on a Friday and the screaming would start between 4:00 and 6:00 p.m. and would continue throughout the weekend. Neighbours visited the landlords to complain, and have provided written statements for this hearing. The first is from a neighbour who states that the screaming was not a result of pain, but was non stop, all day, for multiple days in a row. It started

up again at about 8:00 a.m. Another is from a neighbour who states that the child screaming from the rental unit on weekends goes from morning until early afternoon. Another letter states that on a couple of occasions, the writer heard screaming and yelling, which continued, in both occasions for more than 20 minutes. The letter of the realtor states, "... he was only asked to move after a weekend of mayhem with his children screaming at the top of their lungs and slamming doors in the downstairs suite for about 35 minutes non stop one Saturday afternoon at approx. 12:00 noon."

The landlord also pointed out that the letter of the Realtor also specifies that it was getting harder and harder to get cooperation from the tenant about showing the rental unit and the offer to purchase was obtained with absolutely no cooperation from the tenant. It states that the realtor could never get a straight answer about agreeing to showings during open houses, and requested to show the property only when his children were not spending the weekend with him.

The landlord also denies that it was their intention at the beginning of the tenancy to sell the rental unit, and the landlords were not fraudulent in creating a tenancy with the tenant. About 3 months after the tenant moved in, the landlord's health worsened. The tenant was advised of that verbally and then the landlord sent a text message to the tenant on May 25, 2014 explaining why. A copy of the message has been provided.

The landlord further testified that the tenancy agreement specifies that cable is not included in the rent which would also cover wifi. The landlords thought it would be nice to let the tenant use the landlord's wifi and the landlords gave the tenant the password even though they had no obligation to. The landlords also knew that the tenant's funds were tough, and as a gratuity the landlord offered to deduct from the rent the cost of cable, but the tenant never got back to the landlords about it. The landlords had found an advertisement showing free installation and \$30.00 per month for 6 months, which would be to the end of the lease, so offered a rent reduction in that amount. Then the landlords discovered that the tenant got cable himself when the landlords saw the technician on site.

The landlord also testified that the tenant kept wanting to be bought out or paid off, and referred to letters provided for this hearing. The first is an email from the tenant to the landlords stating that the tenant has carefully tracked the time spent attempting to resolve the matter, that there were too many open houses and unreasonable requests for access, and if the landlords didn't respond with a "good faith" attempt to make a compensatory offer, the tenant would be filing for arbitration. The next is the email from the Realtor to the landlords, mentioned previously, which states that the tenant has been less than cooperative, never providing a straight answer about agreeing to showings, and that the tenant was only interested in how much money he would receive in the event that he was asked to move out. The next is an email from the tenant to the landlords stating that the tenant is willing to negotiate leaving early, but there will need to be compensation. The final is an email from the tenant to the landlords stating, "I am open to being bought out, just wanted to ensure that we all have the same facts."

The notice to end tenancy was taped to the door of the rental unit on August 7, 2014. The house was listed for sale on July 28, 2014.

The second landlord testified that no agreement was made with the tenant about internet and does not recall any text messaging agreeing to reimburse the tenant for whatever the cable amount is.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate or reduce the damage or loss suffered.

In this case, the tenant claims monetary compensation with respect to cable and wifi but has no evidence of what amount he is claiming. Therefore, I find that the tenant has failed to establish element 3 in the test for damages.

With respect to the tenant's claim for monetary compensation for loss of quiet enjoyment, I have reviewed the evidentiary material, and upon hearing the testimony of the parties, I am not satisfied that the tenant has established that the landlords entered into a tenancy agreement with the tenant fraudulently. The landlord testified that his illness got worse after the tenancy began and the notice to end tenancy was issued 5 months after the tenancy began.

The landlords issued a notice to end tenancy due to continued crying by the tenant's child. However, before issuing it, the landlord provided the tenant with a letter stating that the noise caused a great deal of disturbance to the landlords and neighbours and states that the landlords texted the tenant on July 20 and August 3, 2014 and the tenant failed to respond on either occasion. The letter goes on to say that sometimes the noise may be out of the control of the tenant but the incidents have become too frequent. Further, the email from the Realtor of September 9, 2014 speaks to "... a weekend of mayhem with his children screaming at the top of their lungs and slamming doors in the downstairs suite for about 35 minutes non stop one Saturday afternoon at approx. 12:00 noon." In the circumstances, I find that the noise was more than a crying baby as described by the tenant and the landlords had cause to issue the notice ending the tenancy. Therefore, the tenant is not entitled to any compensation for the issuance of the notice.

The tenant also claims that the landlords harassed him, and I have read the material wherein the tenant requests compensation, and the letter of the Realtor stating that the

tenant has only been interested in how much money he would receive in the event that he was asked to move. I am not satisfied that the tenant has established that the landlords are required under the *Act* to provide the tenant with any compensation, and I am not satisfied that the tenant has established any of the elements in the test for damages, and the tenant's application is hereby dismissed without leave to reapply.

Conclusion

For the reasons set out above, the tenant's application is hereby 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: October 24, 2014

Residential Tenancy Branch

