



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on October 17, 2014.

Background and Evidence

The tenancy began on September 22, 2014. The rent was \$450 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$225 at the start of the tenancy.

The tenancy ended on October 31, 2014. The landlord returned the security deposit to the tenant at that time. The Application for Dispute Resolution makes a number of claims that contemplated an ongoing tenancy. As the tenancy has ended those claims are moot. The only remaining claim is the tenant's claim of \$1225. The Application for Dispute Resolution states: "I am asking for a monetary order of \$1225 consisting of \$225 for the return of my security deposit and \$1000 for punitive damages and for pain and suffering." I determined from the details of the dispute that the tenant is seeking compensation from the landlord for breach of the covenant of quiet enjoyment as well as punitive damages.

Issue(s) to be Decided

The remaining issue to be decided is whether the tenant is entitled to a monetary order and if so how much?

Analysis

Section 29(1)(b) of the Residential Tenancy Act provides as follows:

Landlord's right to enter rental unit restricted

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;

...

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

Policy Guideline 16 includes the following:

“Types of Damages

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.”

....

“An arbitrator does not have the authority to award punitive damages, to punish the respondent.”

Monetary Order:

With respect to each of the tenant's claims I find as follows:

- a. I dismissed the claim for the return of the tenant's security deposit as the deposit was returned when the tenant vacated the rental unit.
- b. I dismissed the tenant's claim for punitive damages. Policy Guideline #16 provides that an arbitrator does not have jurisdiction to award punitive damages to punish the respondent.
- c. The tenant seeks damages for "pain and suffering." While not specifically stated in the Application I consider that to be a claim against the landlord for breach of the covenant of quiet enjoyment. The laundry was upstairs. The tenant complained of the landlord coming upstairs for reasons not related to the laundry. He testified his privacy was compromised. He also complained of the presence of rats. The tenant acknowledged his complaints were insufficient evidence to warrant a monetary order. The landlord gave poison but did not provide traps. The landlord responded by saying the tenant had exclusive possession of his room but not the common areas. I determined the landlord is not liable to compensate the tenant for these complaints.

The tenant further complained that he is entitled to compensation when the landlord improperly entered into his room. On October 22, 2014 the landlord put a notice on his door that she needed access to his rental unit. The Notice failed to comply with the requirements of section 29 as it did not provide the reason for entry and the date and time of the entry. The tenant advised the landlord it was an improper notice by letter. The tenant testified the landlord became extremely angry, ripped the notice up and put something on the back.

The landlord testified she wrote on the back of the torn note that she would be attending on October 24, 2014 to take measurements. The landlord did not take a copy of the note. The tenant testified he submitted materials to the Residential Tenancy Branch including the original of that note. Those materials have not reached the file. The tenant did not keep a copy of the backside of the note so he was unable to tell me what it said. He did not serve the landlord with a copy of the back side of the torn note as required by the Rules of Procedure. He testified the

landlord attended the next day with family members for the purposes of measuring. She barged her way into the rental unit despite the tenant's protestation. Her family members were abusive of the tenant during this process. The police were called.

In the circumstances I determined that even if the landlord had provided the date, time and purpose of the entry, it was not carried out in a proper manner. However, while the tenant has established a breach of a right he has not provided proof of pain or suffering. In the circumstances I determined the tenant is entitled to nominal damages in the sum of \$75.

Conclusion

I ordered the landlord(s) to pay to the tenant the sum of \$75.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: November 28, 2014

Residential Tenancy Branch

