



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding YANI C. JIN HOLDINGS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR CNR MNDC FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 and ;
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) To cancel a Notice to End Tenancy for unpaid rent; and
- e) A Monetary Order as compensation for emotional stress caused by the landlord and disturbance of her peaceful enjoyment.

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated September 22, 2014 and of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant owes rent and they are entitled to an Order of Possession and a Monetary Order for unpaid rent?

Or is the tenant entitled to any relief? Has the tenant proved on the balance of probabilities that the landlord disturbed her peaceful enjoyment contrary to section 28 of the Act and if so, to how much compensation has she shown entitlement?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in

July 15, 2012 on a fixed term lease expiring July 14, 2016, that rent is currently \$1130 a month inclusive and a security deposit of \$590 was paid on June 5, 2012.

This was a very difficult hearing where the landlord insisted I go through her bank statements three times to prove the tenant had not paid her rent in one month. Meanwhile, she had provided no copy to the tenant of these statements. I went through one year of statements to assist the parties and found the tenant had paid her rent for every month according to the bank statements which showed a direct deposit from the tenant. The mix-up may have been because the tenant made two payments in March, one on March 5, 2014 for March and one on March 31 for April. She again paid on April 30, 2014 for rent for May 2014. The landlord's summary statement showed no rent payment for May 2014. The tenant submitted deposit slips as well to prove she had paid her rent. However, she said she never got any receipts from the landlord and would like to get them to have proof to stop the continual harassment.

Although I went through the statements and pointed out the payments to the landlord, she kept insisting it must be wrong. She constantly interrupted the tenant and refused to listen when I advised the rent had been paid according to her own evidence and that we would move on to the issues of the tenant. I had to mute her twice and when she returned to the conference, she still insisted that she wanted me to go through the statements for a fourth time and refused to address any other issues. Approximately 35 minutes of the 45 minute hearing was spent in working with the landlord and her bank statements.

The tenant said the landlord's behaviour in the conference illustrated the problems she has had with her. She said that she had to call the police last year for the landlord was banging on her door for 20 minutes and disturbing her special needs child. She said she has no peaceful enjoyment of her unit because of the landlord's harassing behaviour. She believes the problem arose because the landlord did not want to pay the heat and hydro and so tried to evict her on various pretenses. Last year, the landlord served her Notice to End Tenancy because she said she wanted to have her son move in but then the Notice was withdrawn before the hearing. Then she tried to sell the property and had a realtor harass the tenant by bullying her and saying she would have to move. She did get 24 hour notice for showings after insisting on written notice. At Christmas, she said the landlord came in for inspection and was yelling and upsetting the family. Now the landlord has been harassing her over unpaid rent that the tenant states she paid and proved it; she said the landlord was texting her for 8-9 hours at a time over this allegedly unpaid rent. When queried about possible resolution, she said she would be willing to agree to move out without notice if and when she found a suitable place.

The landlord refused to respond to the tenant's submissions and said she wanted to argue about the unpaid rent again. The conference was ended after 45 minutes as all the evidence had been taken and discussed.

In evidence is the Notice to End Tenancy for unpaid rent, the tenancy agreement, an "additional requirement" addendum signed by both parties, full bank statements of the landlord from July 2013 to September 2014, deposit slips from the tenant, statements from both parties, a letter from the landlord stating the tenant did not pay rent for May 15, 2014 and registered mail receipts.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

Monetary Order and Order of Possession:

The onus is on the applicant to prove on a balance of probabilities their claim. The landlord's application is based on unpaid rent for May 2014. I find the landlord has not satisfied the onus. I find the weight of the evidence is that the tenant paid rent for each and every month, although on different dates; although I went through her bank statements several times and spent the majority of the hearing time to demonstrating this to the landlord, the landlord refused to be convinced. I also find the tenant's deposit slips and her evidence credible as it is supported by the landlord's own bank statements. Furthermore, the landlord did not issue receipts to the tenant and continued to accept rent after issuing the ten day notice without limiting the acceptance by receipt to "use and occupancy only". Therefore, I set aside and cancel the Notice to End Tenancy dated September 22, 2014. I dismiss the application of the landlord. The tenancy is reinstated and continues. Likewise, I find insufficient evidence that the tenant owes any rent to the landlord so I find the landlord not entitled to a monetary order for unpaid rent.

On the tenant's application, the onus is on her to prove on the balance of probabilities her claim that she was subject to a rent increase without the requisite 3 month notice provided in section 43 of the Act and that the landlord has significantly disturbed her peaceful enjoyment by her behaviour and caused undue stress and hardship for her and her special needs child. She requests compensation of \$1130 for the alleged harassment.

I find section 43 of the Act states the landlord may impose a rent increase only up to the amount "agreed to by the tenant in writing". I find the tenant agreed to certain rent

increases in the “additional requirement” document signed by her at commencement of the tenancy. I find in those circumstances the landlord is not required to give a three month notice of increase as the document advised of the yearly increase and the amount and she agreed to it. Therefore I dismiss this portion of the tenant’s claim.

Regarding the tenant’s claim for unreasonable disturbance of her peaceful enjoyment, I find section 28 of the Act states the tenant is entitled to quiet enjoyment including, but not limited to, reasonable privacy and freedom from unreasonable disturbance. I find the evidence of the tenant credible and prefer it to the evidence of the landlord as the landlord refused to discuss any of the tenant’s concerns about her behaviour and constantly interrupted and yelled on the telephone, accusing the arbitrator of being unfair for not finding the tenant owed unpaid rent, even after the arbitrator went through paid rent for each month by date of payment for a year from the landlord’s own bank records; the arbitrator complied with her request to go through the records again several times but the landlord would not recognize the accuracy of the tenant’s evidence which corresponded to her own bank statements.

I find the landlord has unreasonably disturbed the tenant for several months by yelling in her home at Christmas time, by banging on her door until the Police were called and by constantly emailing her and otherwise harassing her for rent that she already paid. Although the tenant alleged a realtor also bullied her about moving, I find insufficient evidence that this was on instruction from the landlord or that the landlord knew about this. However, I find, as the tenant contended, the landlord illustrated in the hearing that she will not listen to logical discussion and proof of payment. I find that this unreasonable disturbance of the tenant was not every day but sporadic. If accumulated days are calculated, however, it has amounted to at least half a month of significant disturbance. I find the tenant entitled to one half of one month’s rent as compensation for unreasonable disturbance contrary to section 28 of the Act.

I find also that the tenant is entitled to receive a receipt each month for her payment of rent. I find that the tenant’s request to have it sent by mail to her is reasonable, considering the issue of the landlord’s behaviour.

Conclusion:

I dismiss the application of the landlord in its entirety without leave to reapply and I find she is not entitled to recover filing fees for her application.

I find the tenant entitled to a rent rebate of \$565 (one half of one month’s rent) for compensation for unreasonable disturbance and interference caused by the landlord’s behaviour. A rent reduction is ordered for January 2015 to compensate her.

I HEREBY ORDER pursuant to sections 28 and 65 of the Act that the tenant's rent for January 2015 is reduced to \$565 (from \$1130) to compensate her for unreasonable disturbance.

I HEREBY ORDER that the landlord send a receipt to the tenant each and every month for her payment of rent.

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 18, 2014

Residential Tenancy Branch

