



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OM AX REALTY LTD - PROPERTY MGMT DIV
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF
 CNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by both the Tenant and the Landlords.

The Landlords applied for an Order of Possession and a Monetary Order for unpaid rent, to keep the Tenant’s security deposit; and to recover the filing fee.

The Tenant applied to cancel the notice to end tenancy for unpaid rent, for money owed or compensation for loss under the *Residential Tenancy Act* (the “Act”), and to recover the filing fee.

An agent for both Landlords (the “Landlord’s agent”) and the Tenant appeared for the hearing. The Landlord confirmed receipt of the Tenant’s written and digital evidence, the Tenant’s original Application and the Tenant’s amended Application. The Tenant confirmed receipt of the Landlord’s Application. The Landlord’s agent confirmed that they had not submitted any written evidence prior to this hearing.

Preliminary Issues

The parties confirmed that the Tenant had vacated the rental suite at the end of October, 2014 and therefore there was no requirement for me to make a determination on the Landlords’ Application for an Order of Possession and the Tenant’s Application to cancel the notice to end tenancy, which is hereby now dismissed.

The parties also agreed that the Tenant had paid a security and pet damage deposit for the rental suite and that this had been dealt with between the parties since the ending of the tenancy. Therefore, there is no requirement for me to make a determination on the Landlords’ Application to keep the Tenant’s security deposit.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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's agent called the owner of the rental unit to provide affirmed testimony during the hearing. The Tenant indicated that she had a witness at the start of the hearing but elected not to have any witness appear for the hearing.

A large amount of written and digital evidence was submitted by the Tenant and referred to by both parties during the hearing. However, I have only documented the relevant facts and issues in this decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for lost rent for two weeks of November, 2014?
- Is the Tenant entitled to monetary compensation for losses incurred during the tenancy and as a result of ending the tenancy?

Background and Evidence

Both parties agreed that a previous tenancy agreement for the rental suite started on June 1, 2013 for fixed length of one year after which the tenancy continued on a month to month basis. Rent for this tenancy was established in the amount of \$1,350.00 per month.

On April 1, 2013 the Tenant moved to a renovated property next door because the Landlord wanted to complete major renovations to the rental suite. The Tenant moved to the property next door for a period of five months and paid \$1,275.00 in rent per month.

The Tenant and Landlord then signed a new tenancy agreement when the Tenant took occupancy of the newly renovated rental suite on September 1, 2014. The written tenancy agreement, submitted in written evidence, shows that it was for a fixed term of one year and rent was payable under this new agreement in the amount of \$1,400.00. The parties agreed that rent was payable on the first day of each month.

The Landlord's agent testified that during the move-in inspection for the renovated rental suite, it was noticed that the Tenant had a cat which was not authorised under the

tenancy agreement. As a result, the Landlords explained to the Tenant that this was not allowed as they had experienced problems with previous renters who had cats. The Landlord's agent explained that the tenancy agreement called for no pets and that if pets were to be authorised there would be a requirement for a pet damage deposit. The Landlord did take a pet damage deposit at the start of the tenancy but the Landlord's agent testified that this was for the Tenant's dog and not for a cat.

As a result, the Landlord explained to the Tenant they she would have to either remove the cat from the rental suite or mutually agree to end the tenancy.

The Tenant explained that she had the cat with her during her previous tenancy for the same rental unit and the Landlords were aware of this. The Tenant explained that she did not see why there was an issue with her bringing the cat back with her into the renovated suite. The Tenant explained that she did not want to get rid of her cat and as a result, spent the new two months looking for alternative accommodation. The Tenant submitted that had she known that the Landlords were going to have an issue with her cat she would not have signed or entered into the agreement.

At the end of September, 2014 the Tenant informed the Landlords that she would be vacating the rental suite at the end of October, 2014.

The Tenant testified that she did not have money to pay for October, 2014 rent because she needed funds to put down a security deposit for her new rental suite.

The Landlord's agent explained that they had postdated cheques from the Tenant and when her October, 2014 rent cheque bounced, they issued the Tenant with a notice to end her tenancy for unpaid rent. This resulted in outstanding rent for October, 2014. The Landlord's agent testified that the Tenant's November, 2014 postdated rent cheque was subsequently cashed and that this was used as the October, 2014 rent payment. Therefore, the Landlord makes no claim for October, 2014 rent.

The Landlord explained that they were seeking **\$700.00** loss of rent for the two weeks of November, 2014 that they were unable to re-rent the property for. The Landlord explained that they had conducted viewings of the rental suite and advertised the property on the rental market. However, no documentary evidence was provided to support this testimony.

The Tenant explained that she had put the Landlords on notice in September, 2014 that she would be vacating the rental suite at the end of October, 2014 and therefore there should have been no loss to the Landlord.

In relation to the Tenant's Application for monetary compensation, the Tenant claims for a filing fee that she paid for a previous Application to dispute a notice to end tenancy for cause. This notice to end tenancy was served to her by the Landlords due to the alleged breach of the tenancy by having her cat in the rental suite.

The Tenant explained that she disputed the Notice but cancelled the Application because she decided to move out instead. The Tenant was informed that filing fees for previous hearings cannot be awarded in subsequent hearings. Therefore, this portion of the Tenant's Application is dismissed.

The Tenant claims for moving costs because she alleges that the Landlord bullied her and forced her to move out because of the cat issue and that she had signed a fixed term tenancy agreement.

The Tenant provided lengthy testimony on her monetary claim for four months' rent from the Landlords. The Tenant explained that the new owner had moved her out of the rental suite in April, 2014 on the promise of doing major renovations to the rental unit over a period of three months. The Tenant submitted that the work however, took five months to complete and during that time she lived in an uncomfortable and unsettled environment while waiting for the works to be completed.

As a result, the Tenant claims for the two months extra it took for the Landlord to complete the repairs to the rental unit. In addition, the Tenant also claims for two months of rent for the period of time she had moved back into the rental suite and had to look for another rental unit which allowed pets and that as a result, she was unable to settle into the renovated rental suite.

The Landlord's agent disputed the Tenant's claim. The Landlord called the owner as a witness into the hearing. The owner testified that he repurchased the rental suite in February, 2014 at which point the rental suite required major renovations including replacing the electrical system, windows, dry wall, cabinetry, appliances. The owner testified that the Tenant could not have resided in the rental suite while this work was going to take place.

The owner testified that rather than giving the Tenant notice to end her tenancy for major renovations, he sympathised with her situation as she had children, and offered the Tenant occupancy in the newly renovated suite next door. The owner testified that the Tenant was given one month's free rent, did not have to pay utility bills in excess of \$1,000.00, had an extra 300 square feet of space including access to the basement portion of the home, had free access to internet and cable, and paid a reduced rent of

\$1,275.00 as opposed to her previous rent of \$1,350.00. Therefore, the owner disputes the Tenant's claim that she lived in a property that was uncomfortable.

The owner testified that he did not commit to a three month period of repairs to the Tenant, rather a period of 3-6 months and actually completed the repairs within a five month period. The owner also denied that he knew or gave permission to the Tenant to have a cat in the rental suite which was confirmed and supported by the Landlord's agent's testimony.

The Tenant denied that major renovations were required of the rental suite before it was renovated and claims monetary compensation for being uprooted and moved to another rental suite for an unreasonable amount of time.

Analysis

Section 26(1) of the Act requires a Tenant to pay rent under the agreement whether or not the Landlord complies with the Act.

As the Tenant failed to pay rent for October, 2014, the Landlords would have had the right to recover unpaid rent for this period as the Tenant would not have had authority to not pay rent because she did not have sufficient funds or because she felt that she was being forced out from the tenancy. The Landlords were able to recover this loss by cashing the Tenant's rent cheque for November, 2014 and therefore there is no requirement for me to make a determination on the Landlord's claim for loss of rent for this period.

In relation to the Landlords' claim for loss of rent for two weeks of November, 2014 in the amount of \$700.00, Section 7(2) of the Act and Policy Guideline 3 to the Act requires that a Landlord making a claim for loss of rent from the Tenant's breaking of a fixed term tenancy, is required to minimize loss.

In this case, I accept that the Landlords had been put on sufficient notice that the Tenant was going to vacate the rental suite at the end of October, 2014 in the month of September, 2014. As a result, I find that the Landlords have not provided sufficient evidence of how they attempted to mitigate their loss through the advertisement of the rental unit and how their efforts had not resulted in the successful re-rental for November 1, 2014. Therefore, on this basis, I dismiss the Landlord's claim for the two weeks rent of November, 2014 claimed.

In relation to the Tenant's claim for the two months' of rent for the extra time it took for the Landlord to complete the renovations while the Tenant was displaced, I find that the Tenant is not entitled to this amount. I accept the evidence of the Landlord that the Tenant was given the option to move to another rental suite while the work was taking place and did so on a voluntarily basis. The Tenant provided insufficient evidence to show that the rental suite did not require major renovations, and in any case, the Tenant had remedies under the Act to dispute this if she would have been served with a notice to end tenancy by the Landlord for wanting to do these renovations.

I also find that the Tenant was offered an appropriate deal with monetary compensation through her rent and utilities for the temporary residence and I accept the owner's evidence that this was a newly renovated suite with more space than what the Tenant had in her rental suite. The Tenant provided insufficient evidence to show how the temporary residence was uncomfortable and how this gives rise to a monetary claim for two months of rent.

I also find that the conflicting testimony of both parties in relation to the timing of the renovations results in insufficient evidence to show that a set time had been documented and agreed by the parties, and what the consequences would have been had the Landlord failed to complete the renovations within an agreed time period. I find that even if the Landlord had taken an unforeseen amount of time to complete the renovations, the Landlord had still offered out of generosity, a suitable place for the Tenant to reside in while the work was being completed. As a result, I dismiss this portion of the Tenant's Application.

The Tenant claims for two months' of rent for the time period she moved back to the unit and the Landlord had bullied and forced her to leave the tenancy. The Tenant has failed to provide sufficient evidence to show that the Landlord bullied or forced the Tenant to leave the tenancy. At the time the new tenancy agreement was signed, both parties agreed that there would be no pets in this tenancy and if the Tenant wanted to have her cat with her in the rental suite, the Tenant had an obligation to bring this to the attention of the Landlord and ensure that she had written consent from the Landlord before she signed the agreement.

Both parties provided conflicting evidence of whether the Tenant was allowed to have a cat and I find that the Landlord offered the Tenant a mutual agreement to end the tenancy as a way to resolve this issue. I find that this is not evidence that the Landlord bullied or forced the Tenant to leave the tenancy as this is an option available to both parties under the Act. Furthermore, the Landlord pursued the cat issue with a notice to end tenancy, which the Tenant did dispute, but decided of her own volition to instead

leave the tenancy. This does not give rise or merit to the Tenant's claim that she was forced to leave the tenancy, rather I find that the Tenant left of her own volition instead of pursuing the matter using remedies under the Act available to her for a determination on whether she could have the cat reside with her.

As a result, I find that the Tenant's claim for return of the two months' rent for August and September, 2014 and her subsequent moving costs are not proven, which I accordingly dismiss.

As neither party has been successful in their Applications, I also deny both parties the recovery of their filing fee.

Conclusion

For the reasons set out above, I dismiss the Landlords' and Tenant's Application in their entirety without leave to re-apply.

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

