



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, MNDC, OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order permitting the tenant more time to make an application to cancel a notice to end tenancy than permitted by the *Residential Tenancy Act*, for an order cancelling a notice to end tenancy; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The landlord named in the application and the tenant attended the hearing, as well as an agent for Remax, who did not testify or take any part in the proceedings, but attended to represent the owner's agent. The landlord and the tenant each gave affirmed testimony and 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 tenant advised that she has moved out of the rental unit and the application for an order cancelling a notice to end tenancy is withdrawn. Therefore, the tenant's application for more time to dispute the notice is dismissed.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for breach of contract?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this tenancy began on July 1, 2014 and the tenant moved out of the rental unit on October 1, 2014. Rent in the amount of \$600.00 per month was

originally payable under the tenancy agreement but was reduced to \$500.00 per month by the landlord in writing effective September 1, 2014, and there are no rental arrears. Copies of the tenancy agreement and the notice decreasing the rent have been provided. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$300.00 which was returned to the tenant at the end of the tenancy. The rental unit is rented to the landlord by another landlord. The landlord who rents the house to the tenant is the landlord of this tenant.

The tenant further testified that she had asked for the basement suite because of her health and had complained to the landlord that she didn't want to climb stairs at all. The tenant's bedroom was upstairs until the suite was entirely ready, and the tenant believed it would only be days. The bathroom and fridge were downstairs and the stove was upstairs making the tenancy very difficult. The tenant has fibromyalgia, whiplash, back and nerve problems and as a result has difficulty with stairs and has to walk slowly due to the pain in her back. The tenant wanted the suite in the basement, and that's what she rented.

The tenant also testified that the work that need to be completed in the unit she rented included painting, woodwork and electrical. She was kind of forced to stay upstairs because of the paint fumes and people coming and going all the time, so the tenant mostly stayed in the room upstairs for privacy. She kept complaining about how much it hurt going up and down stairs, and all of her belongings were downstairs. She was very upset but tried to keep her composure and didn't ask to move downstairs but expected it would happen as soon as possible. The tenant did not feel that being negative toward the landlord would be beneficial. However, the landlord lied to the tenant and the tenant found it disheartening daily about getting something done. Painting and other improvements were promised, but all that was done was abit of painting and abit of woodwork. There is still more painting to do and the landlord planned on putting in a stove, carpets, locks and the bathroom required repairs. The rental unit was kind of in a disgusting state, in that it needed cleaning and the floors were cement.

Due to the stress, the tenant couldn't function and her son would take her to his place to take care of her. He lost 2 days of work as a result. The tenant was very supportive for it to work out, however the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which increased the stress. A copy of the notice has been provide and it is dated September 4, 2014 and contains an expected date of vacancy of September 14, 2014 for unpaid rent in the amount of \$500.00 that was due on September 1, 2014. The landlord had told the tenant on or about August 20, 2014 that the landlord was going to allow September rent free so the tenant didn't pay the rent. She became very upset and her son picked her up.

The tenant claims \$267.72 for gas fees for going back and forth from the rental house to her son's house as well as moving expenses in the amount of \$1,100.00.

The landlord testified that she rented a share of her rented home for \$600.00 per month because she needed a room-mate. The rental unit in the basement was advertised as a suite because she wasn't sure if a renter would be compatible to live with the landlord. The tenant didn't want to be downstairs due to spiders, so the landlord offered a room upstairs and the tenant moved her TV and food into the fridge.

The landlord painted the cupboards downstairs but the designated bedroom was fully filled with the tenant's boxes. The tenant had double the amount of stuff than she had space for.

The landlord further testified that the tenant never complained once about stairs and used the bathroom in the lower level. The landlord told the tenant she would paint the rental unit and did so except for the bathroom. Woodwork was done, such as replacing windowsills and trim and the landlord had a carpenter frame in the duct work so spiders wouldn't get in and tried to make the rental unit downstairs look as good as she could. The landlord reduced rent because the tenant complained, but the landlord is not sure what she complained about, but the landlord tried to make the tenant happy. The tenant decided to move anyway. The tenant didn't stay there for about the last 25 days of September, 2014.

The landlord admits that her dog ate the tenant's electric toothbrush and the landlord agrees to pay for its cost, but does not agree that she should pay moving expenses.

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 such damage or loss.

In this case, the landlord does not dispute the fact that the tenant contracted for a rental unit that was not provided, however the landlord reduced rent by \$100.00 per month effective 2 months after the tenancy began, and the tenant moved out a month later at the beginning of October, 2014, choosing to stay elsewhere for about the last 25 days of September. Further, the tenant testified that the landlord issued a notice to end the tenancy effective September 14, 2014 for unpaid rent and the tenant testified that the landlord allowed the tenant free rent for the month. The landlord did not dispute that testimony. The tenant also testified that her health is such that it's painful to walk up and down stairs and complained about that to the landlord. The landlord testified that the reduction in rent was due to the tenant complaining but stated she wasn't sure what the tenant complained about. I accept the testimony of the tenant, and I find that the tenant has satisfied elements 1 and 2 in the test for damages.

The tenant claims moving expenses in the amount of \$1,100.00 and recovery of gasoline for her son's vehicle for picking up the tenant and returning her to the rental unit when she felt she couldn't be there, however, moving expenses are generally valued at the amount of the monthly rent. I am not satisfied that the tenant has established that the landlord should pay for the gasoline.

With respect to mitigation, I do not find that the tenant was required to complain to the landlord in order to mitigate any damage or loss. The landlord had an obligation to provide the rental unit that the tenant contracted for.

In the circumstances, I find that the tenant has established a monetary claim in the amount of \$500.00.

The landlord did not dispute that her dog ate the tenant's toothbrush, and the landlord agreed to pay the amount of \$67.72 as evidenced by the tenant's receipt.

Since the tenant has moved out of the rental unit, I decline to order the landlord to comply with the *Act*, regulation or tenancy agreement.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end tenancy is dismissed as withdrawn.

The tenant's application for more time to dispute the notice to end tenancy is dismissed.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$567.72.

This order is final and binding and may be enforced.

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 06, 2014

Residential Tenancy Branch

