



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, OPR, MNR, MNSD, FF, O

Introduction

This hearing dealt with two related applications. One is the landlord's application for an order of possession, a monetary order and an order permitting retention of the security deposit and pet damage deposit in partial satisfaction of the claim. The other is the tenant's application for orders setting aside a 1 Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Non-Payment of Rent. Both parties appeared and had an opportunity to be heard.

At the beginning of the hearing the parties agreed that the tenancy would end at 1:00 pm, December 31, 2014, and that an order of possession would be granted to the landlord for that date and time.

Although the tenant had filed evidence that was in support of a claim for a monetary order she had not amended her application for dispute resolution to include such a claim. The landlord expressed her desire to have all issues between the parties heard and decided at this time. Accordingly, I went ahead and the parties' evidence on their respective applications for a monetary order.

As the parties and circumstances were the same for both applications one decision will be rendered for both.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order and, if so, in what amount?
- Is the tenant entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced October 1, 2013. The monthly rent of \$1000.00 was due on the first day of the month. The tenant paid a security deposit of \$500.00 and a pet damage deposit of \$200.00. The rent includes all utilities including Internet and cable.

The rental unit is a 1200 square foot basement suite. The landlord lives upstairs with her eight year old daughter and her invalid grandmother.

The walking from the front of the house to the suite entrance is a series of stepping stones cut into the sloped lawn. There is not a ninety degree riser between each step. Instead there is a grassy slope. The tenant says it is about twelve inches from one step to another. The tenant says there are nine steps in total.

The tenant says that when she looked at the unit she went in and left through the landlord's unit. She looked at the patio but did not think about or look for the walkway to the unit. When the movers brought her furniture, including appliances, they did not use the walkway. Instead they used the slope beside the walkway.

The landlord and the tenant became friends. The landlord's daughter really liked the tenant and enjoyed spending as much time as possible with the tenant and her dogs.

In January 2014 the tenant lost her job. With the permission of the landlord bred one of her dogs who produced two litters of puppies as an additional source of income for her.

In the spring of 2014 the tenant applied to be a homestay provider for foreign students. On June 16 the program administrator advised her that after inspecting the home and thing about it "I am concerned about the small stepping stones down the grass at the side of the yard. They could be dangerous in rain and snow and it is not a proper entranceway to a home. If your landlord agreed to put proper stairs down to your entrance I would consider your home for a student. With them unfortunately I cannot."

The tenant advised the landlord of this response.

That summer, after some delays, the tenant's father did some renovations to the steps. He doubled the width of each step by adding a second paving stone to each step. The landlord said the tenant directed the work. The tenant said this measure did not rectify the situation because the issue was the slope between the stairs and the slope was still there.

The tenant had trouble paying the rent. She paid the March and April rent in April. The May rent was paid in full. The tenant paid \$700.00 towards the June rent on June 18 and \$700.00 towards the July rent on July 20. She paid nothing for August.

The tenant made arrangements to rent another place and paid \$500.00 deposit for it. On August 30 the landlord and the tenant had the following exchange of text messages:

Tenant to Landlord: "If we could work this out it would save us both a lot of grief. My thoughts are: if you allow me to stay here for \$700.00 per month starting September until the end of December; you get the stairs fixed by the middle of September. I can be approved for a student. Then starting January, I will the full \$1000 provided that the dishwasher is installed by Christmas."

"OK that works I just have to ask for the \$700 for Aug as well as Sept."

"OK"

"Awesome. . .glad you can stay:)."

When the tenant went back to the other place and told them she would not be moving in they refused to return the deposit paid to her.

On August 31 the tenant sent the landlord the following message:

"Trying to get my security deposit back, but they don't want to budge. Would it be okay that I pay you August rent with puppy money in December? I can pay you 500 when I cash my cheque on Tuesday and the remainder when I get my next cheque. I believe it will be deposited on the 5 but might be a bit later due to the holiday."

There is no record of the landlord accepting this proposal.

The tenant paid \$500.00 on September 1 towards the September rent and \$200.00 on September 9.

The landlord testified that when the tenant did not pay the full \$700.00 on September 1 and she thought about the fact that the tenant was \$1600.00 in arrears when they made the agreement she changed her mind about reducing the rent so on September 9 she sent the tenant the following text message: "I've been thinking about all of this a lot and I just can't afford this anymore. I am sorry but I feel like I'm going to have to let you go."; to which the tenant responded: "We have a legal binding agreement."

On September 9 the landlord issued and posted a 10 Day Notice to End Tenancy for Non-Payment of Rent.

Since then the tenant has made the following payments towards the rent: \$700.00 on October 10; \$350.00 on November 3; and \$350.00 on November 17. Her position is that they have an agreement that the rent is \$700.00 per month.

On October 10 the landlord issued and served another 10 Day Notice to End Tenancy for Non-Payment of Rent. She never served the tenant with a 1 Month Notice to End Tenancy for Cause.

The tenant testified that the dishwasher has not worked since the start of the tenancy. She told the landlord about the problem but the dishwasher was never repaired or replaced. The landlord testified that the tenant spoke to her about the dishwasher in February 2014. There was not further mention of it and she forgot about the issue. The tenant says she spoke to the landlord about it on many occasions.

At the end of March 2014 the landlord went to Alberta for what she thought would be a two week visit. Because of circumstances she did not return home until May 19. The tenant said she that she could not reach the landlord for the first month she was away.

The tenant says she told the landlord before she left for Alberta that there were sugar ants in the unit. The landlord suggested she use ant traps. When the landlord called her at the end of April about the rent the tenant again told her about the ants. She tried the remedies suggested by the landlord but they did not work. Finally on May 9 the landlord's mother came over with some cans of ant killer purchased at a local hardware store. The landlord's mother sprayed the ant killer and that took care of the problem.

For the first few months of the tenancy the Internet was always off at 10:00 pm. The landlord explained that the modem was located in the room where her grandmother slept. She had heard that it was not a good idea to have a modem operating when a person was sleeping so she used to disconnect it at night. She quit doing that after Christmas 2013. The landlord also admitted that she turned off the tenant's Internet connection for a month this fall when they were fighting over the rent and other issues. It was acknowledged by both parties that the Internet was now back on. The tenant's evidence also logged other short interruptions in service. The landlord said that whenever the tenant reported a problem she would immediately disconnect and then reconnect the modem, which would fix the problem.

The tenant provided quite a bit of evidence about the amount of time the landlord's daughter spent in her unit, even when she was not there. She did testify that she never spoke to the landlord about her concerns.

The tenant alleged that the landlord refused to provide adequate heat and that she had turned off the furnace. The landlord responded that when the tenant complained about cold she immediately provided space heaters. The tenant said the heaters were not adequate. The landlord said that, except for one occasion when the thermostat was replaced, the furnace has never been shut off. The tenant said it had only come on once in the past two months..

The tenant testified that she had a very bad fall late at night on October 23, 2014 and suffered some injuries as a result. There is no lighting on either side of the house. The tenant says the steps have become more dangerous as time has gone on because the grass between the steps has been worn down by use and the area has become slipperier.

The tenant started a new job two weeks before the hearing. Her employment has not been interrupted but she is taking painkillers to cope.

Analysis

Is the landlord entitled to a monetary order and, if so, in what amount?

The arrears of rent for June and July are \$600.00.

I find that on August 30 the parties agreed to change the tenancy agreement as follows: For the period of August to December the rent would be reduced to \$700.00 per month. The stairs would be fixed by mid-September.

Effective January 1, 2015, the rent would go back to \$1000.00 per month provided that a new dishwasher was installed by Christmas.

All other provisions of the tenancy agreement remained the same, including the obligation to pay the rent on the first day of the month.

However, the tenant promptly reneged on the agreement. She immediately tried to change the agreement to allow her to pay the August rent in December and she only made a partial payment on September 1. If she had complied with the agreement the tenant would have been in a better position to insist that it was still in effect. As it is I find that both parties renounced the August 30 agreement: the tenant by her actions; the landlord by an explicit statement.

Accordingly, I find that as of the date of the hearing the arrears of rent for August to November were \$1900.00: \$1000.00 for August; \$300.00 for September; \$300.00 for October; and \$300.00 for November.

In total, I find that the arrears of rent up to and including November 28, 2014, are \$2500.00.

Is the tenant entitled to a monetary order and, if so, in what amount?

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

Section 65(1)(f) allows an arbitrator to order that past or future rent be reduced by an amount that is equivalent to the reduction in the value of the tenancy agreement.

Subsection 7(2) of the *Residential Tenancy Act* provides that a landlord or tenant who claims compensation for damage or loss that has resulted from the other's non-compliance with the act, the regulations or the tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the unit was rented with a dishwasher; the dishwasher has not worked throughout this tenancy; the tenant did advise the landlord of the situation; and the landlord did not rectify the situation within a reasonable period of time. The only appliance provided was the dishwasher. When you consider the size of the rental unit and the fact that he rent included all utilities the dishwasher only represents a small percentage of the value of this tenancy. Having considered all of these factors I award the tenant compensation in the amount of \$225.00 for lack of a dishwasher (\$15.00 per month for 15 months, which includes December 2014).

The landlord should not have turned off the Internet at night nor should she have turned it off because the tenant was in arrears of rent. The reduction in value of the tenancy agreement as a result of no Internet service after 10:00 pm for a few months is minimal. The loss of Internet service for a whole month is more substantial. IN addition, the lack of service was the result of a wrongful action by the landlord. Accordingly, I award the tenant \$150.00 for this item. I find that any other interruptions in service were caused by the Internet provider and were outside the landlord's control.

Although I accept the tenant's testimony that the ant situation became quite unpleasant ultimately the fix for the situation was a one time application of an ant killer purchased at a local hardware store; not a specialized treatment. No explanation was offered for the tenant's failure to try this solution herself over the two months that this situation existed

and intensified. The tenant has to take some responsibility for managing conditions in her home and minimizing her damages. No damages are awarded for this claim.

The same comments apply to the visits from the landlord's daughter. If the tenant did not want this little girl in her unit she should have said something to her mother; not included the little girl in her efforts to train the dogs not to bark when she was away; asked the landlord in writing to change the lock on the suite door; and if all else failed, applied to the Residential Tenancy Branch for an order allowing her to change the locks. No damages are awarded for this claim.

Although the tenant alleged that the landlord interfered with her mail the evidence does not establish, on a balance of probabilities, any deliberate or wilful action by the landlord.

With regard to the claims relating to the walkway the tenant's testimony was that the condition of the walkway has caused her two major problems:

- She was not able to bring in a homestay student;
- She suffered an injury in October as a result of a fall.

The first point that must be made is that the construction of the stairs was not a hidden element of this rental unit. She had an opportunity to look at them before she rented the unit but did not. Further, if they were a significant issue she could have moved out of the unit at any time upon giving one month's notice to end tenancy. Finally, she fought hard to stay in this unit even after the stairs became an issue with the home stay program.

Assuming that the tenant was successful in establishing the first two elements of a claim for monetary compensation (and no finding is made on that issue) the tenant did not provide sufficient evidence on the third element. The tenant never quantified her claim nor did she provide any information to establish her monetary losses, if any, resulting from the condition of the stairs. She did not provide any evidence as to whether approval of her home was the last requirement for her being accepted as a home stay provider by this program, about when she would have received a student if approved, or the payment she would have received if approved.

Her evidence shows that she was also applying to other homestay programs but no information is provided about the success of those applications and if any concerns were raised by those other programs about the condition of the rental unit.

Accordingly, no damages are awarded for this claim.

Filing Fee

As the landlord was substantially successful on her application she is entitled to reimbursement from the tenant of the \$50.00 fee she paid to file it. The tenant was not required to pay a filing fee when she filed her application for dispute resolution so no other order will be made.

Set Off

I have found that the tenant must pay the landlord \$2550.00 and that the landlord must pay the tenant \$375.00. Setting one amount off against the other I find that the tenant must pay the landlord the sum of \$2175.00.

Conclusion

- a. An order of possession effective 1:00 pm, December 31, 2014, has been granted to the landlord with the consent of both parties. If necessary this order may be filed in the Supreme Court and enforced as an order of that court.
- b. For the reasons set out above I find that the tenant must pay the landlord the sum of \$2175.00. Pursuant to section 72, I order that the landlord retain the security deposit of \$500.00 and the pet damage deposit of \$200.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1475.00. If necessary, this order may be filed in Small Claims 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: December 09, 2014

Residential Tenancy Branch

