



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

There are applications filed by both parties. The landlord seeks a monetary order for compensation for loss of rental income and recovery of the filing fee. The tenant seeks a monetary order for money owed or compensation for damage or loss and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The landlord has confirmed receipt of the notice of hearing package and the submitted documentary evidence submitted by the tenant. The landlord has stated that his notice of hearing package and the submitted documentary evidence were returned after being sent by Canada Post Registered Mail on October 31, 2014 to the tenant. The landlord has provided copies of the envelope, Customer Receipt Tracking number as proof of proper service. The tenant clarified that her address is in a new development and that her address is not complete as a result mail was not deliverable. I find that the landlord's notice of hearing package and the submitted documentary evidence were properly served to the tenant based upon the tenant's listed mailing address with the Residential Tenancy Branch and as such find that it is admissible and the tenant is deemed to have been properly served.

At the end of the hearing, the tenant provided a unit number of #23 to complete her mailing address to receive a copy of the decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Is the tenant entitled to a monetary order?

Background and Evidence

The landlord seeks a monetary claim of \$2,025 for compensation from the tenant for the loss of rental income because the tenant failed to abide by an agreement to not seek resolution for dispute between the two parties over the ending of the tenancy. The landlord states that the tenant agreed in an email March 14, 2014 which states, "Will you do July 15th with last month free and no legal action and no showing showings and a good reference for me". The tenant disputes this stating that no agreement was made with her. The landlord refers to a signed addendum which shows both parties signatures and it states, "Last month of the tenancy will be free from May 15 to June 15 and no showing of the suite will take place before June 15". The landlord clarified that the compensation and agreement was changed from July and June. The tenant states that she was keeping an eye on the rental property and noticed that the landlord did not advertise the rental for several (3) weeks before renting it after 6 weeks. The landlord confirmed that he took his time advertising it and that he was making small upgrades to the rental before re-renting it.

The tenant seeks a monetary claim of \$1,800.00 for the loss of quiet enjoyment over an 18 month period for \$100.00 per month. The tenant states that expenses were incurred where she had to leave the residence on average of twice a month because of cooking smells from the landlord and that she had to eat out. The tenant states because of her health she is very sensitive to smells. The tenant states that she was told by the landlord that he is seldom home and does not cook. The tenant reported naucious food and odors from the landlord's basement unit into her rental which made her sick to the landlord. The landlord disputes this stating that no substantial cooking was done and that examples of the tenant's complaints of smells were documented in photos of text messages sent between the two parties. The landlord refers to photo #6 where the tenant texted the landlord over bad smells. The landlord responded saying that the only thing at the time was that he made coffee. The landlord refers to photo #7 where the tenant inquired of the landlord if he had just made toast. The landlord responded that cleaning vents would not stop causing the smells to travel up, but that he was trying to keep the smells down.

Analysis

I accept the evidence provided by both parties and after review of the direct testimony and the submitted documentary evidence find that the landlord has failed in his application for a monetary claim for loss of rental income. The landlord refers to an agreement made with the tenant that as compensation for ending the tenancy and 1 month of free rent that no action for dispute would be taken by the tenant as shown in the submitted email and signed agreement. I note that the agreement does not spell out what the tenant would agree to in gaining this compensation, but I note that it is a reasonable assumption based upon the included emails between the two parties. However in a claim for loss of rental income the landlord must show that he did lose

rental income as a result of the actions or neglect of the tenant. In this case, the landlord has acknowledged that he did not immediately advertise the rental for approximately 3 weeks before renting it at 6 weeks after the tenancy ended. As such, I find that the landlord suffered no loss of rental income as a result of any actions or neglect of the tenant. The landlord's claim for a monetary order is dismissed.

In the tenant's claim for monetary compensation for the loss of quiet enjoyment, I find that the tenant has failed due to insufficient evidence. The tenant has clarified in her direct testimony that she suffers from ill health and that she is sensitive to smells. The tenant has stated that these smells are nauseous and make her ill and that the landlord mis-led her into believing that he did not cook. The landlord disputed this stating that the tenant was complaining about normal smells and that none of them were excessive. The landlord showed 2 examples of this in his documentary evidence of photographs taken of text messages between the two parties regarding coffee and toast smells. The landlord argued that he made reasonable efforts to limit the smells, but that the tenant's smell was too sensitive. I find that in a normal home there are some smells that would travel between walls and ceilings. However, neither party has provided any details of the age of the home or the stated condition as that would be found in an older home or those from a new one. The tenant also stated that these smells were for 18 months requiring her to vacate the rental unit at least twice a month to eat out. The tenant has failed to provide any details of these expenses or of any proof that the smells were excessive. On a balance of probabilities I prefer the evidence of the landlord over that of the tenant and the tenant's application for a monetary order is dismissed.

Conclusion

The landlord's application is dismissed.

The tenant's application is dismissed.

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 18, 2014

