



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR CNR MNR MNDC MNSD RR FF

Introduction

This hearing first convened on December 9, 2014 pursuant to the tenant's application to cancel a notice to end tenancy and for monetary compensation and the landlord's application for an order of possession and monetary compensation. The landlord and the tenant participated in the teleconference hearing. The tenant stated that she had moved out of the rental unit on December 7, 2014; I therefore dismissed the portions of the applications regarding the notice to end tenancy.

It became apparent that there were issues with the evidence of both parties, and I adjourned the hearing to allow the parties to reorganize and resubmit their evidence. I also learned that on December 5, 2014 the landlord had filed a second application for monetary compensation, and I joined that file to be heard together with the other two files.

The hearing reconvened on January 13, 2015. On that date the landlord stated that they did not receive the tenant's new evidence package. The tenant provided evidence from Canada Post that they attempted to deliver the registered mail package and left two notices for pick up. I was satisfied that the tenant complied with service requirements under the Act, and I found that the landlord was deemed served with the tenant's new evidence package. I admitted that evidence.

The landlord stated that they dropped their evidence off at the postal outlet where the tenant's post office box is located, with the clerk's assurance that the mail would be placed in the tenant's box. The tenant stated that she did not receive that evidence. The landlord did not serve this evidence in compliance with the Act, and I therefore did not admit that evidence. The tenant confirmed that she had received the landlord's previously-served evidence, including a USB, and I admitted that evidence.

The tenant also stated that she did not receive the landlord's full second application. The landlord could not provide sufficient evidence to establish that the tenant was served with the full second application, and I therefore dismissed that application (filed December 5, 2014) with leave to reapply.

The parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other admissible evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on September 29, 2014, with monthly rent of \$1200 payable in advance on the first day of each month. The tenant paid the landlord a security deposit of \$600. The rental unit is a basement suite in the landlord's house.

On November 4, 2014 the tenant informed the landlord that she was putting a stop payment on her rent cheque. On that date, the landlord served the tenant with a notice to end tenancy for unpaid rent. On November 5, 2014 the tenant applied to dispute the notice, as well as for monetary compensation of \$3000. In her application, the tenant wrote "I have no problem paying my rent as soon as all repairs are fixed." On November 14, 2014 the landlord applied for an order of possession and a monetary order for November 2014 rent.

In the first convened hearing on December 9, 2014, the tenant verified that she had vacated the rental unit on December 7, 2014.

Tenant's Application

The tenant stated that when she first viewed the rental unit she saw one part of the floor bubbling up and she asked the landlord if there was mildew, because her son is severely asthmatic. The tenant stated that the landlord said there was no mildew. The tenant stated that while she was moving into the unit the kitchen and entrance were completely torn up and there was a handyman doing work.

The tenant stated that there was flooding in the unit and the landlord's handyman came and just cut out the drywall, which was wet and mildewy, sprayed the area with some anti-mildew spray and patched it up again. The tenant stated that it started leaking again two days later. The tenant stated that because of the water and mildew she had to move her bed and her son's bed out of the bedrooms, and she had to store her clothing on a rack in the kitchen. The tenant stated that she and her son became extremely ill from the mildew, and the tenant's dog got "mildew poisoning" and as a result has become completely deaf. The tenant submitted photographic and video evidence to support this part of her claim.

The tenant stated that the entrance to the unit was all dug up and she was fearful for her safety because there was water leaking behind the electrical panel.

The tenant stated that the landlord would not give the tenant a receipt when she paid the rent in cash; they would not give her any garbage disposal bins; they played loud music; they yelled and banged on the tenant's door; and their handyman was coming and going at all hours without proper notice. The tenant believed that the landlord opened the tenant's mail, because otherwise the landlord would not know the tenant was receiving disability payments. The tenant stated that the landlord started harassing the tenant and threatening to lock her out. The tenant stated that the landlord falsely accused the tenant of turning off the heat and hot water, and reported her to the police.

The tenant stated that because of the landlord's actions she had to incur moving costs and her disability payments were cut off.

The landlord's response to the tenant's claim was as follows.

The landlord submitted that the tenant falsified evidence by putting pieces of baseboard and laminate in plastic bags and creating the mildew. The landlord stated that their insurance agent came and said there was no mould. The landlord submitted that the tenant has provided no medical or veterinary evidence to support her claims about sickness that she, her son or her dog suffered due to mildew, and they stayed in the rental unit until December 7, 2014 despite claiming how sick they were.

The landlord stated that when the tenant complained about noise, the landlord and their family tried to be quiet. The landlord denied pounding on the tenant's door. The landlord stated that they have the right to hire a handyman to do repairs. The landlord stated that they put up a written notice of entry and waited three days before entering. The landlord also stated later in the hearing that they were constantly knocking on the door to do repairs, but the tenant would not answer or would deny entry. The landlord stated that the only ones who pounded on the door were the police.

The landlord denied opening the tenant's mail and stated that the tenant told the landlord that she was on welfare. The landlord stated that there was a garbage can for the tenant's use. The landlord stated that they had no hot water and it can only be turned on and off in the rental unit. The landlord stated that obviously when the cops showed up the tenant turned the water back on.

Landlord's Application

The landlord stated that the tenant did not pay November 2014 rent. The landlord stated that when the tenant told them on November 4, 2014 that she was putting a stop payment on her

rent cheque, they issued her a notice to end tenancy. The landlord stated that the tenant did not pay the rent in cash on November 10, 2014 as the tenant has claimed.

The tenant stated that on the evening of November 10, 2014 the landlord came down to the rental unit and the tenant decided to pay the landlord the rent in cash. The tenant stated that her boyfriend was present and witnessed the tenant paying the rent. The tenant stated that the landlord took the cash and did not come back with a receipt.

Analysis

Tenant's Application

I accept the tenant's evidence that the rental unit was not fully repaired when she moved in and the entrance was dug up. I accept the tenant's evidence that there was some mildew or mould present in the rental unit. I do not accept the landlord's submission as likely that the tenant falsified the evidence of mildew, particularly when the landlord sent a handyman to address the leaking and mildew problem. However, the tenant did not provide medical or veterinary evidence to establish the extent of the health impact the mildew had on her, her son or her dog. I therefore find it appropriate to grant the tenant a nominal award of \$200 for the condition of the rental unit.

I find it likely that the landlord did cause some disturbance to the tenant's quiet enjoyment. The landlord acknowledged that they did cause some noise, and they were "constantly knocking on the [rental unit] door." The relationship between the landlord and the tenant became very acrimonious, and I find that the landlord was at least partly at fault. However, the tenant also caused some of the problems that led to her loss of quiet enjoyment, such as when she would refuse the landlord access to do requested repairs. I find the tenant provided insufficient evidence to establish that the landlord opened the tenant's mail, denied her garbage disposal or harassed her and falsely called the police. I therefore grant the tenant a nominal award of \$100 for loss of quiet enjoyment.

The tenant is not entitled to her moving costs, which she did not specify in her claim. The tenant chose to move out of the rental unit before the scheduled hearing regarding the notice to end tenancy.

Landlord's Application

On a balance of probabilities, I find it more likely than not that the tenant did not pay her November 2014 rent. On November 5, 2014, the day after she told the landlord she was stopping payment on her rent cheque, the tenant applied for monetary compensation of \$3000 and indicated in her application that she would pay the rent when the repairs were done. I find it stretches credulity to accept that five days later, the tenant "decided" to pay the rent in cash, without first obtaining a receipt, when part of the tenant's complaint was that the landlord did not

issue her receipts for rent paid in cash. I therefore find that the landlord is entitled to \$1200 as claimed for November 2014 rent.

Filing Fees

As the tenant's application was mostly unsuccessful, I find she is not entitled to recovery of her filing fee.

As the landlord's first application was successful, they are entitled to recovery of the \$50 filing fee for that application.

As the landlord's second application has been dismissed with leave, the landlord is not entitled to recovery of the filing fee for their second application.

Conclusion

The tenant is entitled to \$300. The landlord is entitled to \$1250. I order the landlord to retain the security deposit of \$600 in partial compensation of their award and I grant landlord an order under section 67 for the balance due of \$350. This order may be filed in the 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: January 21, 2015

Residential Tenancy Branch

