



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, OPT

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a tenant's Order for Possession?
- b. Whether the tenant is entitled to a monetary order for a wrongful eviction?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The landlord rented the rental unit from the owner. The tenant rented a room that included an off suite bathroom.. They shared the kitchen and living room. The tenancy began on October 1, 2014. The rent was \$900 per month plus \$100 for utilities for a total of \$1000 per month payable in advance on the first day of the month. With the

consent of the landlord that tenant's boyfriend has moved in and is living with the tenant.

On February 2, 2015 a dispute between the tenant and the landlord's cleaner (landlord witness #1). Landlord witness #1 testified that she has worked as a cleaner for 8 years and she cleans the landlord's rental property for a couple of hours each week. The tenant testified that she was not told by the landlord that the cleaner would be attending to the rental unit and had quite a fright when she overheard the vacuum cleaner and discovered the cleaner present. A dispute arose over the use of the washing machine. I determined that the tenant yelled at the cleaner and expressed her extreme unhappiness to the cleaner that the landlord had not advised her the cleaner was coming. The cleaner testified the encounter was extremely unpleasant as the tenant yelled at her to the extent that she started to cry. After the dispute the landlord was text messaged. The cleaner remained in the rental unit to complete the cleaning.

The tenant acknowledged that she had met the cleaner on a previous occasion and knew that landlord's witness #1 was employed by the landlord to clean the rental property. However, she testified she thought the landlord was impolite as the landlord failed to tell her of the cleaner's schedule.

There is a dispute on the evidence as to exactly what happened when the landlord returned to the rental unit later that day. The landlord testified she told the tenant she would have to leave. The tenant testified she was told tenant's witness #1 that the tenant would have to leave. In any event it is clear the landlord told the tenant or her boyfriend that "she wanted the tenant out." The landlord testified the tenant said fine and left for a walk with her dog for a walk. She returned and she and her boyfriend stayed in her room for another day and then vacated. Many of her belongings continue to remain in her room in the rental unit.

The landlord testified the parties agreed that the tenant and her boyfriend would vacate the rental unit. The tenant disputes this agreement. The landlord produced a text

message from the tenant's boyfriend dated February 2, 2015 that included the following statements: "I'm sorry that this all happened and that you were subjected to this. She's completely irrational and told me she wanted nothing to do with me and didn't want my help – I've obliged. I would appreciate the return of the rent via email money transfer at your earliest convenience as I will need to secure something tomorrow so I'm not left on the streets. Good luck to your and Rocky."

On February 3, 2015 the landlord returned the rent for February to the tenant's boyfriend as he had paid the rent.

On February 6, 2015 the landlord returned home to find the tenant was present with a police officer. The landlord was told at that time by the police officer that the landlord could not end the tenancy without first going through the Dispute Resolution process of the Residential Tenancy Branch. The landlord testified she previously told the tenant's boyfriend that the tenant had 30 days to leave. The tenant filed her Application for Dispute Resolution on February 6, 2015.

The tenant testified she felt uncomfortable and she did not return to the rental unit. On cross examination she acknowledged that she was not threatened with physical harm. Further, she is free to come and go. Many of her belongings remain in the room to the date of the hearing.

In the later part of February the landlord's solicitor wrote the tenant advising her that she had not been evicted.

The rent for February has not been paid. The landlord has served a 10 day Notice to End Tenancy on the tenant.

Analysis

Section 44 of the Residential Tenancy Act provides as follows:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 52 of the Residential Tenancy Act provides as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

After carefully considering all of the evidence I determined the tenant failed to prove the landlord has wrongfully evicted her for the following reasons:

- I accept the testimony of the tenant that the landlord told her or her boyfriend words to the effect that “she (the tenant) would have to go.” However, those words do not amount to an eviction. For an eviction to take place the Residential Tenancy Act requires that a landlord must use a Notice to End Tenancy in the approved form. The landlord did not use a written Notice to End Tenancy of any sort.
- It is clear the landlord was unhappy about the conduct of the tenant and it is easy to see that a tenant might feel uncomfortable. However, this is not sufficient grounds for a tenant to vacate the rental unit on the basis that she has been wrongfully evicted. There are many situations where landlords and tenant are involved in unpleasantness. A statement of a landlord that the tenant would have to leave does not carry a legal obligation on the tenant to vacate the rental unit.
- The landlord did not use force of any sort or threatened to lock out the tenant. At all material times the tenant had the keys and some of her belongings remained in the rental unit until the date of the hearing.
- On February 2, 2015 the tenant’s boyfriend (who paid the rent for February) texted the landlord and indicated that he had left voluntarily and that he asked the landlord for the return of the rent. The tenant left with her boyfriend. The

landlord returned the rent the next day. While this statement does not bind the tenant, it is easy to see how a landlord might get the impression that the tenant and her boyfriend had voluntarily agreed to vacate the rental unit.

- On February 6, 2015 the tenant called the police. The police officer told the parties the matter must be resolved through the use of the dispute resolution process under the Residential Tenancy Act. The tenant also filed an Application for Dispute Resolution on that date. At the very least it is clear that by February 6, 2015 (four days after the altercation) all parties were aware the tenant had the legal right to remain in the rental unit until the matter was disposed of in an arbitration hearing and that the landlord was prohibited from keeping the tenant out of the unit.
- The tenant did not seek a claim based on a breach of the covenant of quiet enjoyment and on that basis alone it is not necessary to consider it as a claim. No doubt the conversation between the landlord and the tenant where the landlord told the tenant she would have to go was unpleasant. However, even if the tenant had made such a claim, in my view the conduct of the landlord does not amount to a breach of the covenant of quiet enjoyment as it was not “frequent and ongoing interference by the landlord” or “repeated or persistent threatening or intimidating behaviour” as required by Policy Guideline #6.

Application for a Tenant's Order for Possession:

The tenant stated she was no longer interested in continuing with the tenancy. As a result I dismissed the tenant's application for a tenant's Order for Possession.

Application for a Monetary Order and Cost of Filing fee

The Application for Dispute Resolution filed by the tenant seeks a monetary order in the sum of \$2450 for being evicted by the landlord verbally and illegally without notice. At the hearing the tenant presented credit card evidence from her boyfriend indicating they spent more than that sum for hotel rooms. I dismissed the tenant's monetary claim and to recover the cost of the filing fee as the tenant failed to prove she is entitled to

compensation. There is no such thing as a oral eviction. The landlord has not denied the tenant access. The fact that a tenant feels uncomfortable is not sufficient grounds for a tenant to vacate the rental unit and claim against the landlord for the cost of alternative accommodation.

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: March 08, 2015

Residential Tenancy Branch

