



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, PSF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution. I accept that the landlord was served by the tenant with the dispute resolution package. The tenant confirmed receipt of the landlord's evidentiary materials and I accept she was sufficiently served with those materials.

At the outset of the hearing, the tenant requested to withdraw her application to cancel the notice to end tenancy and her application for an order to the landlord to provide services. She testified that she had vacated the rental premises.

Preliminary Issue

The tenant testified that she estimated her loss as a result of this tenancy when she filed her application. She submitted that, at the hearing for this matter, she had been able to calculate further loss and sought to amend her application to seek a larger monetary order. Pursuant to Residential Tenancy Policy Guidelines and the Dispute Resolution Rules of Procedure, the tenant's request to amend her application was denied. She had provided no notice to the Residential Tenancy Branch or to the

landlord/respondent with respect to this amendment. Further, she was unable to articulate what the further amount represented in terms of loss as a result of the tenancy. Finally, the respondent has the right to know the case to face at a dispute resolution hearing. The respondent/landlord would not be in a position to provide a meaningful response to further monetary claims by the tenant that he had not been advised about prior to the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for loss as a result of this tenancy?

Background and Evidence

This month to month tenancy began on September 1, 2014. No written tenancy agreement was created for this tenancy. By way of oral agreement, the rental amount was \$600.00 payable on the first of each month. The landlord testified that he continues to hold a \$300.00 security deposit paid by the tenant prior to the first day of tenancy.

The landlord provided information to explain his issuance of a 1 Month Notice to End Tenancy for Cause under section 47 of the *Act*. The tenant testified that, after receiving the 1 Month Notice on April 28, 2015, she began to move out. She testified that she still has belongings at the residence but cannot access those belongings as the landlord has changed the locks to the unit. The landlord testified that he changed the locks after the tenant advised him that she was no longer residing there but had friends packing her belongings at the rental unit.

The tenant sought a monetary order in the amount of \$400.00. She testified that the landlord shut off her hydro, resulting in all of the items in her refrigerator and freezer rotting. At the hearing, the tenant sought to increase the amount sought however this application to amend the amount sought was denied.

The tenant testified that she had a variety meat in her freezer when the hydro was cut off. She testified that the landlord knew that she could not get hydro in her name. She also testified that the hydro was provided as part of her tenancy. She testified that, when the hydro was disconnected on April 28, 2015, she lost approximately \$300.00 worth of food that went bad. Included in that food was; hamburger; chicken; fish; pork; lunch meat/bologna; and other items. She testified that she did not keep receipts after shopping and that she doesn't keep a list of what's in her refrigerator and freezer but that those were some of the items that she lost.

The landlord testified that all apartments in his building are rented without the provision of hydro. He submitted copies of hydro bills from several other tenants in the building with hydro in their name, testifying that this was the norm for the building: the landlord did not pay hydro for any rental units. He also submitted a letter from the hydro company to indicate that the hydro had been disconnected for this rental unit. He testified that when the hydro company discovered the tenant had not set up an account or paid any bills, her hydro was disconnected. The landlord testified that he was not involved in the disconnection service in any way.

The landlord's property manager and witness testified that he made attempts to negotiate payment and resolution of this matter with the tenant. He testified that, when he cleared out the debris in the tenants' apartment, he found no items of value. He testified that he emptied her refrigerator and freezer and, in doing so, noted some old and ruined items but nothing that was properly packaged or sealed for the freezer. He also testified that any items in the freezer were either expired or inexpensive. He testified there was no meat.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant has provided testimony to describe her loss as a result of this tenancy. The landlord's testimony is in direct contradiction to her testimony. The landlord supplied documentary evidence to support his position. The tenant was unable to provide any documentary evidence to support her position with respect to the nature of hydro payment and her actual loss. Therefore, the tenant has been unable to show on a balance of probabilities that she suffered a loss and that, if she did suffer any loss, that it was a result of action or inaction by the landlord. Finally, the tenant has not been able to provide any evidence that verifies that amount of any monetary loss or loss that requires monetary compensation.

Given the lack of sufficient evidence to support her application, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant withdrew her application to cancel the notice to end tenancy and withdrew her application for an order that the landlord provide services or facilities. Those portions of her application are withdrawn.

I dismiss the tenant's application for a monetary order without leave to reapply.

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: June 22, 2015

Residential Tenancy Branch

