



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, LRE, MNSD, OLC, RPP, OPB, MNR, FF

Introduction

In the first application the tenant applies for an order suspending or setting conditions on landlord right of access to the rental unit, an order allowing the tenant access to her own rental unit, an order for return of personal property, return of deposit money and recover of the filing fee.

By the time of hearing the tenant had relocated. Only the issues of the return of deposit money and the filing fee remain to be considered under her application.

In the second application the landlords seek to recover alleged unpaid May rent and loss of June rental income plus the filing fee. They request for an order of possession is no longer pertinent as the tenant has left.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that either party is entitled to any of the relief requested.

Background and Evidence

The rental unit is a “one bedroom plus den” basement suite in the home owned and occupied by the landlord and Ms. M.B.

The tenant started in November 2014 for a fixed term ending May 31, 2015 at a monthly rent of \$825.00, due on the first of each month, in advance. The tenant paid and the landlord holds a \$400.00 security deposit.

Neither side submitted a copy of the tenancy agreement but they agreed that it provides that at the end of the fixed term the tenancy continues on a month to month basis.

All landlord and tenant correspondence and interaction appears to have been with the landlord Mr. M.L..

The tenant vacated the premises at the start of May. The parties disagree about whether she was gone May 1st, as the landlord testifies, or May 7th as the tenant asserts.

It is agreed that the May rent was not paid.

The tenant testifies that she left because the landlord Mr. M.L. was illegally entering her suite and also because he had crossed the bounds of professionalism into her personal life and posed a threat to her security and safety. She felt unsafe staying there.

She alleges that in March 2015 the landlord Mr. M.L. was asking her about her personal finances.

She says he directed her to turn off her lights and turn the heat down when she was not at home.

She says that on April 16th she returned home to find that her heat had been turned off and a light in the spare room turned off. As well, the vacuum cleaner had been unplugged and items in her luggage had been misplaced.

She wrote to the landlord Mr. M.L. that day regarding restriction of services and telling him not to enter her suite or else she would alert the Residential Tenancy Branch.

The tenant testifies that after that she thought all was OK, but a few days later she returned to her suite to find that a radio had been turned off and some lotion had been spilled. She contacted the RCMP.

She relates issues about garbage pickup, dog barking, parental yelling from upstairs and about realtors viewing the property, but I find none of those allegations particularly germane to the issues here.

The tenant's witness Ms. C.B. testifies that she helped the tenant move out on May 7th and that in her opinion the tenant did not feel safe staying there because of the landlord.

She has no personal knowledge of any of the alleged interactions between the tenant and landlord but for what the tenant has told her.

The tenant's witness Mr. J.C. testifies that he saw the tenant put the April 16th note to the landlord on the landlord's door and that the tenant had told him both before and after the April 16th note, that she felt unsafe because of the landlord.

The landlord Mr. M.L. testifies that he has never entered the tenant's suite improperly. He says he's never been contacted by the RCMP.

He says that he determined that the tenant had abandoned the property on May 1 because she left him a note dated that day saying as much. The note was not tendered in evidence.

He denies any inappropriate conduct. He produces pages of texts between the parties over the duration of this tenancy to show that he was simply being a friend to the tenant.

In response, the tenant states that she had filed her own series of texts between the parties. That evidence appears to have been faxed to the Residential Tenancy Branch on June 17th, the day before the hearing and had not reached the file available to me. It is not clear that the landlord received a copy of it. The landlord's text material was filed on May 20th, almost a month before the hearing.

The tenant's materials have not been submitted and traded within the time permitted under the Rules of Procedure. At hearing I exercised my discretion permitted by Rule 3.17 to refuse the evidence or adjourn to permit its submission. There is no reason the evidence could not have been submitted at least seven days before this hearing, as the Rules provide.

Analysis

The initial question is whether or not the tenant has shown grounds entitling her repudiate the fixed term tenancy and leave. As it is she who makes that claim, the initial burden of proving it falls to her.

Her testimony about what she considers evidence of landlord entry is uncorroborated. Pitted against the denial of the landlord under oath, I find that the tenant has not proved that the landlord at any time has entered her suite without permission.

The text messages filed by the landlord show that they had become friends over the life of this tenancy. She texted him with smiling faces emoticons. She sought out his company and counsel for emotional and scholastic issues. The tenant accepted car rides from the landlord Mr. M.L.. The landlord questioned her about her finances, but it is clear he was doing so because both knew that the continuation of her studies and thus the tenancy after May depended on it. In mid April they were corresponding about the landlord helping to find her a new place to live. This evidence is not consistent with a tenant who is being bothered or untowardly pressured by a landlord.

The tenant's application asserts that the landlord Mr. M.L. asked her out on a date, but there was no testimony or other evidence to support that allegation.

The relationship appears to have changed when, in mid April, the landlord requested that she turn off the lights and turn down the heat when she was away, in order to save on utility costs. The tenant took it as an attempt to restrict her use of a service or facility. I do not agree. The request was simply that, a request to minimize power usage.

On April 27th the tenant texted that May would be the last month of her tenancy. On May 6, the landlord, who had been away for a few days, texted asking were the May rent was. The tenant responded asking to meet with him to explain. In my view such an offer is inconsistent with the tenant's position that the landlord was acting inappropriately or making her feel unsafe. The landlord declined the offer to meet. It was then the tenant asserted that the landlord had broken the lease by entering the suite illegally and that she did not feel safe in the suite after knowing he'd been in it. It was then that the tenant alleged the landlord's conduct had been inappropriate.

The landlord responded offering to accept the tenant's notice to end the tenancy at the end of May. The tenant took the offer as a threat and did not accept it. In my view there were no reasonable grounds for the tenant to perceive the landlord's offer to settle the matter as a threat. Her text indicated that she felt entitled to leave right away because of his conduct and anyway, she had already left a full month's notice to end the tenancy on his door on April 30th. There was no evidence adduced by her at hearing to substantiate the claim of a written notice to end the tenancy being posted on the landlord's door. The tenant requested that the landlord issue a ten day Notice to End Tenancy for unpaid rent and then she would leave. He did not.

Based on the text exchanges submitted as evidence, I find it most likely that the landlord had not entered the tenant's suite unlawfully, had not acted improperly in any

way and did not pose any threat to the tenant. The tenant did not have cause to end the tenancy immediately.

In result, the tenant has vacated the suite, either May 1 or May 7, but did not end her tenancy in accordance with the *Residential Tenancy Act* (the “Act”) sections 45 and 52, which require a signed a dated written notice from the tenant or a mutual agreement signed by both parties.

It follows that the landlords are entitled to recover the unpaid May rent of \$825.00. The landlords did not rent the premises until July. There is no argument or evidence that they failed to mitigate loss by renting soon. A landlord purporting to re-rent premises without such definitive documentation runs a significant risk. I find that the landlord has lost the rental income from June 2015 and I award him damages of \$825.00 in that regard.

Conclusion

The landlords are entitled to a monetary award of \$1650.00 plus the \$50.00 filing fee. I authorize them to retain the \$400.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenant for the remainder of \$1300.00.

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

