



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, LRE, O

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70; and
- other unspecified remedies.

The landlord and her English language interpreter, SG (collectively "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The landlord confirmed that her father SG had authority to interpret the English language for her during this hearing.

During the hearing, the tenant withdrew his application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, an order to suspend or set conditions on the landlord's right to enter the rental unit, and other unspecified remedies. The tenant also confirmed that he was withdrawing his monetary claim seeking \$80.00 for a damaged deadbolt and knob. Accordingly, these portions of the tenant's application are withdrawn.

Issues to be Decided

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

The landlord testified that this month-to-month tenancy began on February 18, 2015. Monthly rent in the amount of \$800.00 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was provided by the tenant for this hearing.

The tenant testified that he was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated April 29, 2015, with an effective move-out date of June 30, 2015 ("2 Month Notice"). The tenant stated that he received the 2 Month Notice on April 29, 2015 and that he intends to vacate the rental unit by June 30, 2015. The tenant stated that he has received his June 2015 rent free, pursuant to section 51 of the *Act* and the 2 Month Notice.

The tenant testified that he is seeking one month's rent compensation of \$800.00 for a loss of quiet enjoyment. The tenant indicated that the landlord and her two sons threatened him on April 27, 2015, when they banged violently on his rental unit door and yelled at the tenant in the presence of his wife and infant daughter. The tenant stated that he called the police and they advised the tenant that this incident was a matter to be dealt with at the Residential Tenancy Branch ("RTB"). The landlord indicated that the tenant has fabricated this incident on April 27, 2015. The landlord stated that she only has one son, not two, and her son does not live with her. The landlord indicated that her son has helped her with tenancy matters and that he served a 2 Month Notice on the tenant on April 27, 2015, but that the tenant demanded another notice, stating that it was on the incorrect RTB form. The landlord stated that her son has helped her with English language translation because she is unable to speak English well. The landlord denied that any threats were made by her son to the tenant on April 27, 2015. The landlord stated that the tenant has had approximately ten people over to his rental unit and the landlord has felt threatened by his behaviour.

The tenant indicated that another incident occurred on May 1, 2015, when one of the landlord's sons threatened the tenant and told the tenant to "find out who he is." The tenant testified that the landlord's son told the tenant to move out "or else." The landlord stated that the tenant has entirely fabricated this incident on May 1, 2015 and that it never occurred. The tenant stated that he is in fear of his own and his family's safety and that he does not feel comfortable residing in the rental unit until he plans to vacate on June 30, 2015.

The tenant stated that although he is receiving one month's rent free for June 2015, this is to compensate him to make his move easier, but that the landlord has disrupted his quiet enjoyment and his right to safety and security. The landlord indicated that the tenant is being "greedy" in trying to receive another month's rent free rent by filing this application and attempting to seek this compensation in addition to the section 51 compensation for the 2 Month Notice.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 28 of the *Act* states the following with respect to the tenant's right to quiet enjoyment:

- 28** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
- (a) reasonable privacy;*
 - (b) freedom from unreasonable disturbance;*
 - (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
 - (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that loss and order that party to pay compensation to the other party. In order to claim for loss under the *Act*, the party claiming the loss bears the burden of proof. The claimant must prove the existence of the 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. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the landlord breached his right to quiet enjoyment and caused a loss that is compensable.

To prove a loss the tenant must satisfy the following four elements:

1. Proof that the loss exists;
2. Proof that the loss occurred due to the actions or neglect of the landlord in violation of the *Act, Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss being claimed.

On a balance of probabilities, I find that the tenant has failed to demonstrate that a loss of quiet enjoyment exists and that it was caused by the landlord in violation of the *Act*. The tenant did not provide any independent witness testimony that the landlord and her two sons threatened him and his family. The landlord indicated that she only has one son, not two, contrary to the tenant's claim. The tenant did not provide a police report to verify that the police attended at the rental unit, further to the tenant's complaint regarding the landlord and her sons' violent behavior. The tenant did not provide any independent documentary evidence to verify any of the incidents or threats from the landlord and her sons. The tenant did not provide sufficient evidence that the landlord entered his rental unit unlawfully without proper notice as per the *Act*. The tenant simply stated that the landlord and her sons banged on the tenant's door and asked him to come out of the rental unit. The landlord denied the threats and intimidating behaviour claimed by the tenant.

The tenant failed to demonstrate that he is entitled to a full month's rent of \$800.00 to compensate for his loss of quiet enjoyment. The tenant noted that the above incidents with the landlord and her sons only occurred over two separate days. The tenant did not provide any medical, wage loss or other documentary evidence to indicate that he suffered any medical injuries, missed time off work or wage loss due to the landlord's and her sons' threatening behaviour. The tenant further did not provide sufficient evidence to show the steps he took to minimize his losses.

On a balance of probabilities and for the reasons stated above, I dismiss the tenant's application for a monetary order of \$800.00 for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement.

Conclusion

The tenant's application for a monetary order of \$800.00 for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement is dismissed.

The tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, an order to suspend or set conditions on the landlord's right to enter the rental unit, other unspecified remedies, and \$80.00 for a damaged deadbolt and knob, is withdrawn.

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 16, 2015

Residential Tenancy Branch

