



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with cross applications. The tenant applied for a Monetary Order for return of the security deposit and compensation for damage or loss under the Act, regulations and tenancy agreement. The landlord applied for a Monetary Order for unpaid rent and authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

I noted that in filing the tenant's application, she provided various amounts in the "details of dispute" section that, when added together, totalled more than the amount indicated in the area for requesting a Monetary Order. Nor could I reconcile the individual amounts to the sum requested for the Monetary Order. However, included in the details of dispute was clear indication that the tenant was seeking return of the security deposit and compensation equivalent to one-half of a month's rent. The tenant stated that she was willing to withdraw her claims for the other amounts and that she wished to proceed with her claim for return of the security deposit and one-half of a month's rent only. The landlord did not object and I amended the tenant's application accordingly.

The tenant had named two tenants as applicants; however, the tenancy agreement names only one tenant and only one tenant signed the tenancy agreement. I amended the tenant's application to exclude the other person who is not a tenant under the tenancy agreement.

Issue(s) to be Decided

1. Is the tenant entitled to compensation equivalent to one-half of a month's rent?
2. Is the landlord entitled to compensation for unpaid or loss of rent?
3. Disposition of the security deposit.

Background and Evidence

The fixed term tenancy commenced on September 29, 2014 and was set to expire on September 30, 2015. The tenant paid a security deposit of \$430.00 and was required to pay rent of \$860.00 on the 1st day of every month. The tenant paid rent for October 2014. On October 20, 2014 the tenant return the keys and possession of the rental unit to the landlord. Also on October 20, 2014 the tenant wrote a letter to the landlord in which she cited issues with the smell of marijuana smoke in her unit and in the common areas.

The rental unit is a condominium unit in a stratified building. The landlord manages the rental unit but no other units in the building.

Tenant's claim

The tenant seeks compensation equivalent of one-half of the rent she paid for October 2014 since she vacated the rental unit part way through October 2014 because the landlord failed to provide her with a smoke free environment. The tenant submitted that the property was advertised as a non-smoking property; however, the tenant submitted that she smelled marijuana at the property and that a guest was taken to the hospital as a result. The tenant testified that she made several complaints to the landlord's office via telephone and text messaging. The tenant claimed the landlord did not phone her back although the tenant acknowledged her cell phone had broken. The tenant did acknowledge receiving a response from the landlord through her sister-in-law. The tenant was of the position that the smoking should have stopped right away, not days or weeks later.

The tenant also seeks return of her security deposit since she left the rental unit clean and undamaged.

Documentary evidence provided by the tenant included the tenancy agreement and the tenant's letter of October 20, 2014.

Landlord's claim

The landlord seeks recovery of loss of rent for the month of November 2014 even though the unit was not re-rented until mid-December 2014. The landlord provided evidence to show re-renting efforts were made shortly after receiving the tenant's notice that she was vacating the unit.

The landlord acknowledged that the tenant left several messages for the landlord and the landlord took the following action:

- On October 9, 2014 a telephone message was left by the tenant but the nature of the call was not disclosed. The landlord tried several times to reach the tenant by telephone but was unsuccessful so the landlord left a message with the tenant's emergency contact person. The landlord also emailed the tenant and provided the tenant with their handyman's telephone numbers.
- On October 11, 2014 the tenant complained of marijuana smoke via an email sent to the landlord's agent. The landlord immediately mailed a letter to the building's strata management company to relay the complaint and tried to contact the tenant via telephone but was unsuccessful as her telephone number was "not in service". The landlord did email the tenant on October 14, 2015 to advise her that they had forwarded a complaint to the strata property managers. The landlord provided a copy of the letter sent to the strata management company as evidence.
- On October 15, 2015 a complaint was posted on the landlord's website about the smell of "pot" smoke. The landlord attempted to contact the tenant via telephone but was unsuccessful as the tenant's telephone number was "not in service"
- On October 16, 2015 another complaint was received from the tenant concerning the smell of marijuana via email. The landlord responded via email that a complaint letter had been filed with the strata management company. Attempts to contact the tenant via telephone were made but they were unsuccessful and the landlord left a message for her with her emergency contact person.

Then on October 20, 2014 the landlord was notified that the tenant was vacating the unit by way of a telephone call to the landlord's office. The landlord met the tenant at the property in the afternoon to retrieve the keys and inspect the unit. The tenant later served the landlord with her letter dated the same date.

The landlord also submitted that the landlord's agents had not detected marijuana smells at the property and no other tenants have complained of the smell of smoke or marijuana except for this tenant. The landlord was of the position that it did everything in its power to respond to the tenant's complaints including writing a letter to the strata property management company.

The landlord provided documentation that included copies of:

1. A written summation of events that took place during the tenancy;
2. The tenancy agreement;
3. Condition inspection reports;
4. Emails exchanged between the parties;
5. A posting on the landlord's website by the tenant;
6. A letter written to the strata property management on October 11, 2014; and,
7. Advertisements placed shortly after the tenant vacated the rental unit.

Analysis

The tenancy agreement signed by the parties includes a term with respect to smoking on the property; however, it is limited to prohibiting the tenant from smoking in the rental unit or the property. The tenancy agreement makes no assurances with respect to the entire property being smoke-free; however, the landlord did not deny the tenant's allegations that the property was advertised as being a non-smoking building and I accept that the tenant entered into the tenancy with that expectation. Further, a tenant has a fundamental right to quiet enjoyment of the rental unit and common areas under section 28 of the Act. The right to quiet enjoyment includes freedom from unreasonable disturbance and significant interference by the landlord or other occupants of the property. The courts have found that suffering from the effects of second hand smoke may constitute a breach of the right to quiet enjoyment and a breach of quiet enjoyment may be a basis for a tenant to end their tenancy.

The Act provides for ways a tenancy ends in various circumstances. In this case, the tenant was bound by a fixed term tenancy agreement. Under section 45(3) of the Act, a tenant may end a fixed term tenancy earlier than the expiry date of the fixed term if the landlord has breached a material term of the tenancy agreement and has not corrected the breach within a reasonable period after the tenant gives written notice of the breach. The tenant's notice must comply with notice requirement of section 52 of the Act which includes: the tenant's signature, address of property, and effective date of the notice. Further, any documents to be served upon the other party must be served in a manner that complies with section 88 of the Act. Service provisions of section 88 do not include electronic transmission by way of text, emails or website postings.

I find the tenant did not provide very strong evidence to demonstrate the presence of marijuana smoke at the property. However, if I were to accept that was the case, and the smoke resulted in a loss of quiet enjoyment of the property she would be entitled to end the fixed term tenancy pursuant to section 45(3) of the Act.

Upon review of the evidence presented to me, I find that the only written notice served upon the landlord by the tenant was the letter dated October 20, 2014 even though the copy provided to me was unsigned.

Based upon the forgoing, I find that giving the landlord a written notice on October 20, 2014 and ending the tenancy that same date is unreasonable notice for the landlord to correct the breach if there was one taking into consideration the landlord would have to pursue enforcement of a no-smoking bylaw, if there was one, through the strata council or strata management company and the landlord cannot simply demand another occupant of the building to stop smoking. While I appreciate the tenant may have been disturbed by marijuana smoke, such issues cannot be rectified almost instantly as the tenant expected, as demonstrated by her comments that waiting days or weeks is unacceptable. Therefore, it is my finding the tenant did not end the tenancy on October 20, 2014 by giving the landlord sufficient and reasonable notice of her intention to do so.

In the circumstances before me, I find the landlord's claims to recover loss of rent for November 2014 only to be reasonable and I deny the tenant's request for compensation as she had an ability to end the tenancy by giving sufficient and reasonable notice which she did not do. Therefore, I award the landlord \$860.00 for loss of rent for November 2014. I further award recovery of the filing fee to the landlord.

With respect to the security deposit, I authorize the landlord to retain it in partial satisfaction of the loss of rent awarded to the landlord.

The landlord is provided a Monetary Order for the sum of \$480.00 [calculated as \$860.00 November 2014 rent + \$50.00 filing fee - \$430.00 security deposit].

Conclusion

The tenant's application has been dismissed.

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$480.00 to serve upon the tenant and enforce as necessary.

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: July 15, 2015

Residential Tenancy Branch

