



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR RR MNDC MNSD PSF FF

Introduction:

This hearing was scheduled to be heard on August 4, 2015. Due to a telephone problem, it was rescheduled and heard on August 5, 2015.

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- e) To cancel a Notice to End Tenancy for unpaid rent;
- f) A monetary order or rent rebate as compensation for the landlord's violation of her rights to quiet enjoyment, for restricted access to her unit and withdrawal of services and compensation for her moving expense, labour for cleaning, downsizing her furniture; and
- g) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated June 4, 2015 and of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

The tenant vacated on July 31, 2015 so the landlord no longer requires an Order of Possession. Has the landlord proved on the balance of probabilities that rent is owed and they are entitled to a monetary order for rental arrears and to recover the filing fee for this application?

Has the tenant proved on the balance of probabilities that her privacy and peaceful enjoyment were violated contrary to section 28 of the Act and that she and her visitors were denied or had extreme difficulty in accessing the unit due to the landlord's actions? Is she entitled to be compensated for her other losses allegedly due to the landlord's actions? If so, to how much compensation has she shown entitlement?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in March 2015, that rent is \$960 a month and a security deposit of \$480 was paid on March 14, 2015. It is undisputed that the tenant has not paid rent for June and July 2015. The landlord requests a monetary order for \$1920 (\$960x2) and to recover filing fees for this Application.

The tenant said she did not pay rent because of increasing difficulties with her landlord. She said her enterphone was not connected and her visitors had problems contacting her and entering the building. In evidence is a letter from the Property Manager to the tenant saying that the Strata cannot honour her request to register the door fobs and the enterphone system until the mandatory move-in fee has been paid by her or the landlord and that a demand was made to the owner of her unit and was ignored. The Strata suggested she could pay the fee and withhold it from her rent. The tenant contends that her lease does not require her to pay move-in or move-out fees. Apparently it was connected on June 7, 2015 according to her written statement.

The landlord said the Management Company just took over from them in April and they don't understand some things. He said he got no call and they have his financial information. Apparently he is one of the developers of the property.

The tenant said she saw the unit before signing the lease but it was dark and only afterwards, her friend pointed out some damage. It was supposed to be a brand new unit as advertised and she was expecting to be able to live there a long time. She encloses some pictures of damage and some cleaning she had to do. The landlord said this was a brand new building and the tenant had her choice of units; he said the one she chose had been briefly occupied by a woman for two months while she was awaiting her own unit. He said the tea spill on the stove did not mean it was not a new stove.

The tenant also said she was shocked to find out her unit was for sale almost immediately after moving in. She said realtors were coming without notice and showing

their clients; she felt her privacy and peaceful enjoyment was violated and she could not even unpack her goods as she thought she might have to move almost immediately. The landlord said that it was very possible that her unit would have been bought by an investor that would have chosen to retain her tenancy; selling the unit did not mean her tenancy was ending. No Notices of Entry pursuant to section 29 of the Act are in evidence.

The tenant claims as follows:

1. \$480: Refund of her security deposit.
2. \$1011.00 Moving cost estimate. She said she actually hired a different, cheaper one. Estimate provided.
3. \$87: a change of address necessitated by moving
4. \$200: for cleaning the stove, patio, oven and unit – 8 hours
5. \$800: time wasted due to landlord's actions
6. \$1000: for furniture she had to get rid of to move into this smaller unit.

Photographs but no invoices of value of furniture in evidence.

In evidence is the Notice to End Tenancy for unpaid rent, a letter listing the tenant's complaints, medical notes regarding the tenant's anxiety and medication, advertisements showing the unit was for sale and for rent at the same time, pictures of discarded furniture and damages, email re. unauthorized entry, a registration receipt and a tenancy agreement and Strata Rules.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord is entitled to a monetary order for two months rent (June and July 2015) in the amount of \$1920 and to recover the filing fee for this application. I find the weight of the evidence is that the tenant did not pay her rent, contrary to section 26 of the Act and this violation caused loss of rent to the landlord.

On the tenant's application, the onus is on her to prove on the balance of probabilities her claim and entitlements. In respect to the Entry problems, I find the Strata Rules attached to the tenancy agreement state that the Strata Lot Owner has responsibilities to arrange for the telephone number they want the Enterphone to call and to provide Management with the name they wish to be displayed on the directory. I find the same rules provide that owners are required to register fobs provided to Non Owner Residents and the tenant had some problems with her fob also. I find the weight of the evidence is that this landlord neglected to arrange for the Enterphone and fob as required by the Strata Rules and put the onus on the tenant to solve the problem. This in turn, I find, put a lot of stress on her as English is her second language. I find she is entitled to a rent rebate from March 15 to June 7, 2015 (3 months) because her entry and/or that of her visitors was restricted contrary to sections 27 and 30 of the Act and this was due to her landlord's neglect of his responsibilities. I find it not sufficient excuse that a new Strata company had taken over the building in April and did things differently as the landlord had a copy of the Rules and is required to observe them just as the tenant is. I find the tenant entitled to a rent rebate of \$150 for each of the three months (\$450 total).

I find the tenant's peaceful enjoyment of her unit was significantly disturbed contrary to section 28 of the Act by the landlord listing the unit for sale as well as for rent (without disclosing this to the tenant) and then allowing realtors to bring clients into the tenant's unit without notice, contrary to section 29 which requires 24 hour written Notice. While it is true that a buyer might permit the tenant to stay and assume the tenancy, I find the uncertainty of the situation and the intrusion on her privacy was a significant interference with the tenant's peaceful enjoyment for her entire tenancy of four months. I find her entitled to a rent rebate of \$100 a month for four months for this disturbance (\$400 total).

I find the tenant quoted some Strata laws or rules that require the landlord to pay moving expenses. I find insufficient evidence of these rules and their application and I find no jurisdiction to make awards under the Strata Property Act. I find she is not entitled to compensation for her moving cost of \$1011.00 under the *Residential Tenancy Act*, although she may be able to recover this in another forum that deals with strata property. Likewise, I find she is not entitled to recover the \$87 paid to the post office for her change of address. She always had the option under the Act of bringing an Application to order her landlord to comply with the Act rather than to move out. I find insufficient evidence that her landlord caused her to move. I dismiss this portion of her application.

I find the weight of the evidence is that she inspected the unit and had a choice before signing the lease to rent this unit. I find she did not qualify the lease by requiring the landlord to clean the unit before moving in and she said honestly that she did not notice the damages before agreeing to rent it. I find her cleaning costs are not recoverable as I find insufficient evidence that the unit was dirty and her costs were due to act or neglect of the landlord. I dismiss this portion of her claim.

In respect to her claim of \$800 for waste of her time due to the landlord's actions, I find I have already compensated her for the fob and enterphone problems which she cited as wasting her time. I decline to make a further award for this. I also find she freely chose to move into this smaller unit and downsize her furniture. I find insufficient evidence that this loss of furniture was caused by the landlord's actions so I find her not entitled to compensation for furniture she got rid of.

Conclusion:

I find the landlord entitled to a monetary order as calculated below and to recover filing fees for this application.

I find the tenant is entitled to deductions from the landlord's order for rent rebates and to recover her filing fee as her application had merit. Her security deposit will also offset the amount owing.

Calculation of Monetary Award:

Rent arrears to landlord, June and July 2015	1920.00
Filing fee to landlord	50.00
Less rent rebate re. enterphone and fob	-450.00
Less rent rebate re. illegal entry	-400.00
Less security deposit (no interest 2015)	-480.00
Less filing fee to tenant	-50.00
Balance is Monetary Order to Landlord	590.00

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: August 05, 2015

Residential Tenancy Branch

