



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order to recover the security deposit and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; plus other issues.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing the tenant withdrew her claim for a Monetary Order to recover the security deposit as the security deposit had already been returned to the tenant on the day the tenancy ended.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on August 01, 2014 for a fixed term tenancy which was not due to end until July 31, 2015. Rent for this unit was \$515.00 per month due on the first of each month. A copy of the tenancy agreement has been provided in documentary evidence. The tenancy agreement names the female tenant SH as the sole occupant. The other person named on this application, JM is the tenant's boyfriend and previous occupant of the unit with the tenant.

SH testified that the landlord knew her boyfriend was living in the unit with SH although he had not been added to the tenancy agreement. The landlord approached SH one day to speak to her about a man that was outside the building asking to speak to SH or JM. The landlord said this person was drunk and swearing and although this person is well known in the area he had not done anything at the building. A few days later the landlord approached SH again asking more questions about that same person. The landlord also wanted JM to fill in a tenancy application as the landlord wanted to list him as a tenant.

The tenant testified that after this the accusations and rumours started against JM when the landlord said JM was selling drugs outside the property in the alleyway. SH testified that this is not true JM would meet his family members outside who were dropping stuff off for SH and JM. The landlord also set up security cameras. The landlord denied JM a tenancy and the tenant was shocked and felt it was discriminatory. The landlord gave JM a letter stating he was not welcome on the property and must leave. This was two days before Christmas and 10 days before SH gave birth. SH testified that she did not want to live in the unit without JM and felt she could not stay in the unit due to the accusations made by the landlord about JM using and selling drugs. The landlord served SH with a One Month Notice to End Tenancy on December 11, 2014 and SH decided to vacate the rental unit on December 15, 2014.

Due to the landlord's false accusations and discriminatory practise SH seeks to recover the following costs from the landlord for having to move from the rental unit:

Paying movers	\$500.00
Recovery of Decembers rent	\$515.00
One month's rent for the tenants' new unit	\$750.00
Security deposit paid for the new unit	\$375.00
Extra costs for 10 days rent in December for another unit	\$240.00
Living costs incurred for having to live out of the unit from December 16th to 23rd	\$500.00
Compensation for pain and suffering	\$1,000.00

The landlord disputed the testimony of SH. The landlord testified that SH moved into the unit in August and was very pleasant. SH told the landlord that she had just met somebody and that he was working in Fort McMurry. SH was told that anyone who moves into the unit must have reference checks and fill in an application. SH said it would not be a problem as JM worked away from home. From October, 2014 the landlord was at the building more as she was setting up a business. The landlord saw JM at the building frequently. SH was told that JM needed to fill in an application for tenancy.

The landlord testified that in November she was across the street and saw a man who she had previously seen overdosing in the street and who is a known drug user in the town. This man was yelling up at the top floor and trying to get into the back door of the building. The landlord contacted a security company and when the manager of the security company heard that the JM was living in the building she told the landlord it was a problem as JM had recently been in prison. The landlord testified she asked the security company to conduct surveillance of the building. The landlord referred to the sworn affidavit from the manager of the security company in which she has written that

she saw many people who are known to the RCMP meeting the JM outside and exchanging small packages.

The landlord had serious concerns about the JM's activities and declined his application to become a tenant in the SH's unit. The landlord called the RCMP and explained the situation to them. The RCMP said they were aware of JM and would increase their drive-bys of the property to monitor the situation more closely. The landlord testified that at this point she believed she had sufficient reason to issue SH with a One Month Notice to End Tenancy as SH is responsible for the conduct and activities of her guests. The landlord testified that she had started a business supporting young children with special needs from the building and could not have drug use in or around the building.

The landlord testified that she provided a letter to the other tenants stating that the JM was not welcome in the building; however, the RCMP later told the landlord she was not able to do this. SH asked the landlord if JM could help SH move out of her unit as SH was pregnant at the time. The landlord did allow JM back on the property to help SH move.

The landlord disputed SH's claim for moving costs as it was SH's choice to vacate the unit after the One Month Notice was served without disputing the Notice. The landlord testified that SH only moved a few blocks away and the company who SH claims she paid \$500.00 to, are a company who help people on low income move without charges. JM and SH's family were also there to assist SH in moving. The landlord testified that SH's evidence shows that it appears SH paid rent in two places for the same time period in December.

SH testified that her family and JM did help her move and the truck and trailer were hired for \$500.00. SH testified that one rent receipt was given by a family friend who rented SH somewhere to stay between December 13 and 31st and the other rent receipt is for SH's new unit they moved in on December 23 and had to pay a full month's rent, the security deposit and 10 days rent for December.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. A landlord is entitled to issue and serve a tenant with a Notice to End Tenancy for Cause if the landlord believes the tenant's conduct or the conduct of the tenant's guest breaches a term of the tenancy. The tenant's recourse would be to dispute the Notice by applying for Dispute Resolution. At a hearing the matter would be determined and the landlord would have the burden of proof to show that the reasons put on the Notice are valid. The tenant would have the opportunity to present evidence to dispute the reasons on the Notice. If the Arbitrator found the landlord had met the burden of proof then the Notice would have been upheld. If; however, the tenant's arguments were valid then the Notice would have been cancelled.

The tenant did not dispute the Notice and vacated the rental unit. The tenant now seeks compensation because she states she could no longer live in the rental unit with the rumors and accusations made against her boyfriend. When it is the tenant's choice to leave the rental unit rather than file for Dispute Resolution to dispute the Notice then the tenant would not be entitled to compensation for any costs incurred as a result of that choice.

Furthermore, If the tenant felt the landlord's reasons on the Notice were unfair or untrue the tenant should have filed an application to dispute the Notice. The tenant has now filled an application to seek compensation because the tenant states she had to vacate the unit a few days before Christmas and a few days before giving birth to her child and with the accusations made against JM it caused pain and suffering. I find the tenant has insufficient evidence to meet the burden of proof that the landlord caused pain and suffering to the tenant which resulted in the tenant having to vacate the rental unit rather than filing an application to dispute the Notice. I refer the parties to a case dealt with in the Supreme Court case of *Whiffin v. Glass & Glass (July 26, 1996) Vancouver Registry No. F882525 (BCSC)*, in which case it was held that attempts by a landlord to end a

tenancy, if he believes he has grounds, do not constitute a breach of the covenant of quiet enjoyment of the premises. That case is the authority over this issue, and states that as long as the landlord believes he has reason to end the tenancy, he can make that assertion “frequently, emphatically and even rudely” and that a landlord is entitled to threaten proceedings in the courts for possession, even if the landlord is wrong. The tenants remedy is to dispute the notice ending the tenancy once given.

Consequently, I am not satisfied that the tenant is entitled to compensation for pain and suffering as the landlord is entitled to serve the tenant with a Notice to End Tenancy.

Conclusion

For the reasons set out above, I dismiss the tenant’s application in its entirety 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: August 17, 2015

Residential Tenancy Branch

