



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, RR, OPR, MNSD, MNR, FF

Introduction

This hearing dealt with applications from both parties. The tenant applied for a monetary order, an order setting aside a notice to end this tenancy and an order permitting her to reduce her rent while the landlord applied for an order of possession, a monetary order and an order permitting him to retain the security deposit. Both parties participated in the conference call hearing.

At the hearing, the parties advised that the tenancy had ended on July 15 and the landlord withdrew the claim for an order of possession and the claim for the filing fee. As the tenancy is over, I consider the tenant's claims for orders setting aside the notice to end tenancy and authorizing her to reduce her rent to have been withdrawn. The hearing dealt only with the respective monetary claims.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on December 1, 2014 at which time the tenant paid a \$544.00 security deposit. They further agreed that monthly rent was set at \$1,088.00 and that the tenant owes the landlord rent for the month of June and for half of the month of July.

The tenant seeks an award of \$1,632.00 which represents a percentage of her rent to compensate her for disturbance throughout her tenancy. The rental unit is located on the lower floor of a home in which the upper floor is occupied by other tenants. The tenant testified that she can hear the upstairs occupants walking on the floor throughout the day and often into the evening and she believes they are wearing hard soled shoes which creates significant noise. The tenant testified that this disturbance continued throughout her tenancy despite repeated requests to the upstairs occupants and to the landlord to remedy the situation.

The tenant seeks to recover \$250.00 in moving expenses as she had to vacate the rental unit due to the continued disturbance of the upstairs occupants.

The tenant seeks an award of \$656.25 as compensation for her labour. She testified that she had anticipated staying in the rental unit for a long time and painted the rental unit. She claimed that she would not have spent time painting and renovating the unit had she known it would be a short term tenancy and believes that the landlord has been unjustly enriched.

The tenant seeks an award of \$544.00 as she claimed that the Craigslist advertisement to which she responded to rent the unit stated that if the tenant stayed for 6 months, the landlord would provide a \$544.00 rebate. The landlord testified that the offer was made if the tenant stayed for a period of 1 year and if rent was paid on no time or early. The landlord claimed that the tenant paid rent late on several occasions while the tenant testified that she at no time paid rent late. The tenant provided evidence showing that her rent for May 2015 was paid in 2 parts, the first payment on May 2 and the second on May 5. She insisted that this was not a late payment as May 1 fell on a Sunday and she was unable to pay her rent on the weekend. When I advised her that May 1 fell on a Friday, she continued to insist that it was a Sunday.

Analysis

As the tenant agreed that she owes rent for June and half of July, I award the landlord \$1,632.00.

The *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and (where applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

The tenant claimed that she was unreasonably disturbed by the upstairs occupants walking on their floor while wearing shoes. She did not allege that they purposely made excessive noise or engaged in unusually noisy activities; she simply objected to their choice of indoor footwear. I find that the tenant should reasonably have expected that while living on the lower floor in shared housing, she would hear the upstairs occupants walking overhead. I can find no way in which the landlord has breached the Act, Regulations or tenancy agreement and I find that the tenant has not met the first element of the aforementioned test. I dismiss the claim for recovery of rent due to disturbance.

I also dismiss the claim for moving expenses as again, the tenant has not proven that the landlord breached the Act in any way.

The tenant chose to paint the rental unit and perform renovations in order to enhance her life in the rental unit. She did not enter into a fixed term tenancy which would have secured her right to remain in the unit long term, nor did she obtain the landlord's agreement that she would be compensated for her labour if she vacated the rental unit shortly after moving in. I can find no way in which the landlord has breached the Act, Regulations or tenancy agreement and I find that the tenant has not met the first element of the aforementioned test. I dismiss the claim for the cost of labour.

The tenant claimed that the Craigslist ad to which she responded offered a rebate after 6 months with no conditions while the landlord claimed that it was conditional upon rental payments being paid on time. Neither party provided a copy of the advertisement and in the absence of proof that the offer was unconditional, I find that it was conditional on rent being paid on time. Although the tenant claimed she always paid rent on time, her documentary evidence proves that May's rent was paid late. I do not accept that she was completely unable to pay rent on the first day of the month if it fell on a weekend and even if I did, I find that May 1 did not fall on a Sunday. I find that the tenant failed to pay rent on time in the 6th month of her tenancy and therefore is not entitled to the rebate claimed. I dismiss the claim for the rebate.

As the tenant has been entirely unsuccessful in her claim, she will bear the cost of her filing fee.

Conclusion

The tenant's claim is dismissed. The landlord is awarded \$1,632.00 and I grant him a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 06, 2015

Residential Tenancy Branch

