



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNC, MNDC, OLC, LAT, O

Introduction

This hearing dealt with 2 applications filed by the tenant. She applied for an order setting aside 2 notices to end this tenancy, a monetary order and orders that the landlord be compelled to comply with the Act and that she be authorized to change the locks to the rental unit. Both parties participated in the conference call hearing.

At the hearing, the parties agreed that the tenancy ended on August 31. As the tenancy is over, most of the matters in the tenant's application are moot, with the only surviving claim being the claim for compensation. This is the only claim which was addressed at the hearing and I consider the remaining claims to have been withdrawn.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on May 1, 2015 and ended on August 31, 2015. They further agreed that the tenant was obligated to pay \$700.00 per month in rent and that the rental unit is located in the basement of a home in which the landlord and her family occupy the upper unit.

The tenant seeks an award of \$2,000.00 for loss of quiet enjoyment during the tenancy. The bulk of the tenant's written and video documentation dealt with a period after she filed her application or dispute resolution. At the hearing, I advised the tenant that I would only consider events which took place on or before the date she filed her application.

The tenant testified that the landlord failed to complete a condition inspection report at the outset of the tenancy, failed to sign a written tenancy agreement and that she had to

write her own receipts for her cash payments as the landlord did not have a receipt book.

She stated that when she moved into the rental unit, the unit was not adequately cleaned and when she reported this to the landlord, the landlord "didn't do much of anything". The tenant testified that she had to spend several hours cleaning to bring the unit to a clean condition.

The tenant testified that the landlord and her husband did not speak English well, so when she communicated with them, their 12-14 year old son had to interpret. The tenant testified that she could tell the son was uncomfortable being put in that position and she thought it was unfair to him.

The tenant testified that when she would ask for receipts for cash payments, the landlords would give her looks that made her feel like she was "2 inches tall". The tenant testified that when she moved into the unit, she found that the toilet seat was broken and she didn't get around to reporting it to the landlord until June 1. The landlord initially accused the tenant of breaking the seat, but when the tenant insisted that it was broken when she moved in, the landlord agreed to replace it. On June 3, the landlord's husband attended the unit to replace the seat and when the tenant invited him in, the tenant said that he looked at the toilet and indicated that it required cleaning. The tenant testified that the toilet needed a "quick scrub" and that she found it very emotionally distressing for the landlord's husband to criticize her housekeeping. The tenant testified that she asked the landlord to leave the seat and she installed it herself. The following day, the tenant returned home after having been away and believed that someone had been in her suite. She contacted the police and the landlord vehemently denied having entered the rental unit. The tenant acknowledged that she could not prove the illegal entry.

The tenant testified that on July 4, the landlord served her with a 2 month notice to end tenancy for landlord's use of property (the "Notice") but they crossed out the "2" and replaced it with a "1", advising her that she needed to vacate by July 30. She testified that she told them they had to give her 2 months' notice and they corrected the Notice by writing in August 30 as the effective date. The tenant testified that she suffers from a mental disorder which causes her to buckle under emotional distress and that given the other circumstances in her life, including being a single mother of 2 young children, the landlord's actions caused significant emotional turmoil.

The tenant testified that throughout the tenancy she has been awakened almost every morning between 4:30 and 6:00 a.m. by the landlord's husband as he prepared to go to

work. She testified that she would hear stomping and doors slamming. She stated that she did not complain to the landlord about the noise in the morning.

The tenant further testified that the landlord and her husband argued loudly every 3-4 days which caused the tenant distress. She stated that their voices were loud, intense and angry and that she spoke with the landlord several times about the disturbance. The tenant claimed that on one occasion, she telephoned the police, but she could not recall the date on which this occurred.

The landlord denied having caused any disturbance to the tenant whatsoever.

Analysis

The tenant bears the burden of proving her claim on the balance of probabilities. 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 (if applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

The tenant's claim is for loss of quiet enjoyment and punitive damages. Pursuant to the Supreme Court decision in *Lee v. Gao*, 1992 CANLII 876, administrative tribunals do not have authority to award punitive damages. I therefore dismiss the claim for punitive damages.

Section 28 of the Act provides as follows:

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.

I accept that the tenant has a right to quiet enjoyment of the rental unit. In order to be successful in her claim pursuant to the test outlined above, the tenant must prove that the landlord breached the Act in some way. Although the landlord was required by law to complete a condition inspection report and written tenancy agreement and she failed to do so, I am unable to find that the tenant suffered any loss as a result as is required to prove the second element of the test.

The landlord is required by section 26(2) of the Act to provide rent receipts and she signed the receipts provided by the tenant. While it would have been prudent for the landlord to purchase a receipt book or write out the receipts herself, I find that she was in compliance with section 26(2). The Act does not require her to be enthusiastic about compliance and I find that she has not breached the Act if she did indeed look at the tenant as if she was 2 inches tall.

The tenant reported a broken toilet seat one month after the tenancy began and I find that the landlord met her repair obligation by replacing the seat 2 days after the tenant reported that it was broken. The landlord's initial belief that the tenant had broken the seat seems reasonable in my view, given that the tenant had used the seat for 1 month prior to reporting a problem, and in any event it is not a breach of the Act to suggest that the tenant broke something in the rental unit that the landlord was previously unaware required repair. The tenant acknowledged that the toilet required cleaning when the landlord's husband arrived to replace the toilet seat and I find the husband's comments to be reasonable and not in breach of the Act.

The tenant acknowledged that she could not prove that the landlord had been in her suite illegally and I therefore find that the landlord has not breached the Act in that regard.

When a landlord wishes to end a tenancy, she is required to provide notice on an approved form and for a reason permitted by the Act. The landlord used the approved form and had a permissible reason for ending the tenancy with the Notice, but altered the notice in an attempt to end the tenancy prior to the proper effective date. I find that this attempt to alter the notice was in breach of the Act. However, I am again unable to find that the tenant suffered a compensable loss as a result. The tenant was aware of the landlord's obligations and asked the landlord to change the notice, which the landlord willingly did. While the tenant was upset that her tenancy was ending, she was not protected by a fixed term lease and therefore did not have the right to expect that her tenancy would continue indefinitely or for a specific period of time. I therefore find

that the tenant has not proven that she suffered a loss as a result of the landlord's actions.

As the service of the 10 day notice to end tenancy for unpaid rent occurred after the tenant filed her application to dispute the Notice served in July, it is unnecessary for me to comment on that notice.

The tenant claimed that she was awakened early every morning by noises from the landlord's unit, but as she did not complain to the landlord, I find that she is not entitled to compensation as the landlord was unaware that there was an issue. It is entirely possible that the noises were simply part of the husband awakening and going about his routine for preparing for work and he could have well been unaware that he was disturbing the tenant. I find that the landlord did not breach the Act with respect to this noise.

The tenant claimed that the landlord and her husband argued loudly several times per week throughout the tenancy, but provided no evidence to corroborate this claim. As this is a multi-family dwelling, the tenant has to make some allowance for noise transference which would not take place were she in a home which was not also occupied by another family. Without evidence to corroborate that these arguments were unreasonably loud and as the landlord denied having been excessively noisy, I am unable to find that the landlord has caused the tenant to suffer from excessive noise exposure. I find that the landlord did not breach the Act with respect to this noise.

I find that the tenant has failed to prove her claim and I dismiss her application.

Conclusion

The claim is dismissed in its entirety.

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: October 05, 2015

Residential Tenancy Branch

