



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, CNR, MNDC, OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

1. An Order cancelling a notice to end tenancy - Section 46 and 49;
2. An Order extending the time limit to apply to cancel a notice to end tenancy – Section 66; and
3. A Monetary Order for compensation - Section 67.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions. At the onset of the hearing the Tenant stated that it was moving out of the unit on September 30, 2015 and withdrew the claim to cancel the notice to end tenancy. The Landlord agreed to an order of possession for this date. As the matter of the tenancy is no longer an issue, I dismiss the Tenant’s claim for the extension of time.

Preliminary Matter

During the hearing legal counsel behaved in a manner that produced a caution and a direction pursuant to Rule 8.7 of the Residential Tenancy Branch Rules of Procedure which provides that an arbitrator may give directions to, inter alia, a party's agent or representative who presents rude, antagonistic or inappropriate behavior. It is noted that legal counsel thereafter was given opportunity to present arguments on all of the claims and to make final comments on behalf of the Landlord.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Are the Landlords entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started on January 1, 2015. Rent of \$1,100.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$550.00. The Tenant paid half of June 2015 rent and asked the Landlord to retain the security deposit for the other half of the rent. The Tenant did not pay for July, August or September 2015 rent.

The Landlord claims unpaid rent.

The Tenant states that as she was preparing to move out at the end of June 2015 silverfish were found in the unit and throughout the Tenant's belongings. The Tenant states that the Landlord was informed of the pests and did nothing but call the Tenant a liar. The Tenant states that the Landlord shrieked at the Tenant and told the Tenant she would be evicted. The Tenant states that the Landlord never inspected the unit and that the silverfish are still present. The Tenant states that the presence of the pests caused extra work cleaning and that despite using a variety of substances the Tenant could not get rid of them. The Tenant claims compensation of \$350.00.

The Landlord states that silverfish were never reported by previous tenants or in any of the other three units of the fourplex. The Landlord states that more than the Tenant's word was required for the Landlord to inspect the unit. The Landlord states that an inspection of the unit could not take place as the police had warned the Landlord not to go near the property. The Landlord states that no other person was sent on their behalf to inspect the unit. The Landlord states that there were no silverfish noted on the move-in condition report. The Landlord states that either the Tenant caused the silverfish or there are no silver fish present. The Landlord argues that as the Tenant has not provided any evidence of the silverfish the Tenant's claim should be dismissed.

The Tenant states that the Landlord failed to provide adequate lighting and maintenance of the driveway and that the driveway has large protruding tree roots with boulders falling off the rock wall. The Tenant states that on June 30, 2015 in the pitch black the Tenant tripped in the driveway, injured her ankle and fell on her arm. The Tenant provided faxed photos of the driveway. The Tenant states that as a result of her injury she had limited mobility for 6 weeks, could not work, and lost wages from her self-employment in pet sitting and home support. The Tenant provided copies of two undated emails indicating an available pet care job. The Tenant states that she saw a physician and was prescribed pain medication. The Tenant states that she is still in pain and in swim therapy. The Tenant states that in June 2015 she earned \$500.00 and that she is able to earn an additional amount of income over her disability allowance. The Tenant claims \$750.00.

The Landlord states that the after the date and time the Tenant states she was injured the Landlord saw the Tenant almost running. The Landlord states that the Tenant has not been since by the Landlord. The Landlord states that the Tenant never made any complaints about the driveway until after the Landlord was told the Tenant was hurt. The Landlord states that while the Tenant may have hurt herself it was not as bad as claimed. The Landlord states that it did not get dark on that date until 10:00 p.m. and that the driveway is lit by the front door light and some street light. The Landlord argues that the Tenant has no claim for compensation as the Tenant did not provide any

breakdown of the global amount claimed in the application, did not provide any supporting evidence for any injury or the amounts claimed for the injury, and did not supply any evidence of the existence of silverfish.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Based on the undisputed evidence of the Parties I find that the Landlord has substantiated that the Tenant failed to pay $\frac{1}{2}$ rent for June and no rent for July, August and September 2015. As a result I find that the Landlord is entitled to \$3,850.00. As the Tenant agreed that the Landlord could retain the security deposit for the June rent owing I deduct the security deposit of **\$550.00** plus zero interest from this amount leaving **\$3,350.00** owed to the Landlord for unpaid rent. As the Tenant has agreed to move out on September 30, 2015 I find that the Landlord is entitled to an order of possession effective this date. As the Landlord has been successful with its application I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$3,400.00**.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Although it may be found that the Tenant injured herself from the state of the driveway, given the lack of any supporting evidence of income loss other than two emails indicating a possible job opportunity, I find that the Tenant has not provided sufficient evidence to substantiate on a balance of probabilities the loss or the amount claimed. I therefore dismiss the claim for lost income.

While the only evidence of the presence of silverfish is the Tenant's oral evidence, I find this evidence to be compelling and truthful sounding. Whether or not the Landlord was restricted from attending to the unit, the Landlord could have inspected the unit through an agent. The Landlord however failed to do anything and as a result cannot offer any rebuttal. I find therefore that the Tenant has substantiated on a balance of probabilities that the unit became infested with silverfish and that the Landlord failed to act. As the

amount claimed by the Tenant is reasonable I find that the Tenant is entitled to the compensation claimed of **\$350.00**. Deducting this amount from the Landlord's entitlement leaves **\$3,050.00** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on September 30, 2015.

I grant the Landlord a monetary order under Section 67 of the Act for **\$3,050.00**. If necessary, this order may be filed in the Small Claims 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: October 2, 2015

Residential Tenancy Branch

