



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This was the reconvened hearing dealing with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for recovery of the filing fee paid for this application.

This hearing began on July 2, 2015, and dealt only with evidence matters. An Interim Decision was entered on July 7, 2015, should be read in conjunction with this Decision and it is incorporated herein by reference.

The parties were informed at the original hearing that the hearing would be adjourned in order to allow the tenant to re-serve his relevant evidence to the landlord in order to consider the merits of the tenant's application at the reconvened hearing.

At the reconvened hearing, neither party raised any issues regarding the service of the other's evidence.

The participants, at the reconvened hearing, were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue-

The tenant has named as a landlord a person not named on the written tenancy agreement. Additionally, this person, "LD", was not in attendance at either the original or reconvened hearing. I have determined that the tenant has not established that LD is a landlord under the Act for the purposes of this application, and their name will be removed from further consideration.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation from the landlord and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence was that this tenancy began on October 7, 2012, ended on May 31, 2015, and monthly rent was \$825.00. The rental unit was in the lower suite of a home occupied by the landlord in the upper suite.

The tenant lists his monetary claim as follows: \$1750.00 for 2 months of rental costs, \$1500.00 for aggravated damages, \$212.50 for ½ of the “damage” deposit, and \$300.00 for moving costs.

The tenant’s relevant evidence included, but was not limited to, a written statement, character reference material and statements, the written tenancy agreement, notices to end the tenancy issued by the landlord, email communication between the parties and digital evidence contained on flash or thumb drives.

The landlord’s relevant evidence included, but was not limited to, the written tenancy agreement, email communication between the parties, letters from acquaintances, digital evidence contained on a flash or thumb drive, and photographs about the residential property.

In support of and in response to the tenant’s claims, the tenant and landlord provided the following:

2 Months rental costs-

The tenant submitted the landlord deprived him of his rights to quiet enjoyment by, among other things, parking his vehicle, which had a camera attached to the dashboard, in a position that the landlord could use the camera to spy on him. The tenant submitted further that the landlord has verbally threatened him and has called him names suggesting that the tenant abused drugs. The tenant submitted further that the landlord has engaged in activity meant to evict him, including harassment and berating.

The tenant submitted that the landlord’s actions have caused him to install a motion detected security camera for his own protection.

The tenant submitted that he has suffered a loss of quiet enjoyment due to the landlord’s attempt to evict him verbally and by a handwritten note.

The tenant submitted that he has at times avoided his home, as he did not feel safe around the landlord, and additionally, the landlord has berated him for smoking cigarettes, when the rental unit was not rented as a smoke-free home.

The tenant submitted that the police have been called to the residential property, but there was no follow-up.

The tenant submitted further that he has lived in the rental unit for 3 winters without heat.

In response to my question, the tenant stated that the time period for which he seeks compensation was for the months of May and June, but retroactively for April.

In response, the landlord submitted that as he is disabled, he is physically unable to threaten the tenant and would not do so anyway. The landlord submitted further that the issues with the tenant arose when he listed the residential property for sale, as the tenant became agitated at the thought of having to move. The landlord submitted further that some issues arose due to the drug problems of the tenant and that he installed a dashboard camera in his vehicle 2 years ago, for insurance purposes.

The landlord expressed that as he was disabled, he was fearful of the tenant.

Aggravated damages-

In support of this claim, the tenant submitted that due to the above referenced behaviour of the landlord, such as threats, documented in his email evidence, and the installation of the camera to spy on him, he is entitled to aggravated damages. The tenant specifically referred to his email evidence to support his allegations against the landlord.

The tenant additionally submitted that he has suffered emotional distress, humiliation and vulnerability in sharing personal information with his workplaces superiors.

In response, the landlord submitted that he has not threatened the tenant and that he himself was threatened by the tenant with a barbell.

½ of the “damage” deposit-

The tenant submitted he is entitled to one half of the “damage” deposit for incidental damage, including cleaning, and a professional carpet care.

Moving costs-

The tenant submitted he is entitled to the incidental costs of moving, such as hiring a moving truck and using family and friends to assist him in moving.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

2 Months rental costs-

The tenant has claimed these costs in compensation for an alleged loss of his quiet enjoyment.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

I have read the emails of the parties and other evidence submitted and find that the tenant submitted insufficient evidence to support that he suffered a loss of quiet enjoyment. I find the email communication shows that the parties were discussing tenancy issues and I did not find the tone of the landlord to be threatening or abusive; rather, the landlord expressed concern about the alleged behaviour of the tenant and other matters. On several of the tenant's emails, there was no email message; rather, in the body of the email, only "[Quoted text hidden]" appeared, which made me question whether I received full evidence or if the evidence was deceptive.

Other than these emails, I found the evidence consisted of disputed verbal evidence at the hearing.

I find that, in any dispute when evidence consists of conflicting and disputed testimony, then the party who bears the burden of proof cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of "facts" is more believable because disputed oral evidence does not sufficiently meet the burden of proof.

I also find the tenant submitted insufficient evidence to show that he was not supplied heat for 3 winters. Had that been the case, I would expect that the tenant would have addressed this issue in the first instance in the first year of lacking heat, and not wait until the tenancy was ending to bring forth this issue.

Additionally, I found the landlord's explanation that he installed a camera on his dashboard for insurance purposes, and that it was installed 2 years ago, to be reasonable and plausible. I was not left with the impression that the landlord used this device to spy on the tenant, although the tenant confirmed that he himself installed a motion detected security camera.

Additionally it is clear the tenant was aware that the landlord could not evict the tenant with a handwritten notice, as he informed the landlord of such. This led the landlord to issue an official 1 Month Notice to End Tenancy for Cause on the Residential Tenancy Branch ("RTB") form, and therefore, I find this landlord issuing the tenant a Notice to end the tenancy is compliant with the Act.

Taken in totality, after considering the relevant evidence of both parties, I find that the tenant submitted insufficient evidence to prove that the landlord has violated the Act or the tenancy agreement. I therefore dismiss the tenant's claim for compensation for a loss of his quiet enjoyment.

Aggravated damages-

The tenant described this claimed loss as resulting from emotional distress, humiliation, and vulnerability in having to share personal and difficult issues with his workplace superiors, specifically in order to rebut the drug charges made by the landlord and a past violent incident, and in time spent looking for a new home.

The tenant also claimed this amount due to the above described actions of the landlord.

Section 16 of the Residential Tenancy Branch Policy Guideline provides that aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- *The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.*
- *The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.*
- *They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.*

In the case before me, I find that the tenant has not presented sufficient evidence to show that the landlord has engaged in deliberate or negligent action causing damage or loss to the tenant. Further, the tenant used his claim for a loss of quiet enjoyment as a basis for his claim for aggravated damages, which I have dismissed.

Due to the insufficient evidence of the tenant, the tenant's claim for aggravated damages is dismissed.

½ of the "damage" deposit-

I found this claim of the tenant for a carpet clean and a professional carpet clean, using as a claim for a "damage" deposit to be inexplicable and unsupported as a basis of loss under the Act. A security deposit is a fee paid by a tenant to the landlord, is held in trust by the landlord during the tenancy, and must be dealt with in accordance with the Act at the appropriate time by both parties, at the end of a tenancy.

The claim of the tenant for ½ the "damage" deposit is dismissed due to sufficient explanation of the basis for this claim.

Moving costs-

As to the tenant's claim for moving expenses, I find these are choices the tenant made on how to facilitate his moving and I find the tenant has failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenant. Additionally, the tenant failed to submit evidence of a cost incurred by him.

The claim of the tenant for moving costs is dismissed.

Conclusion

Due to the above, the tenant's application is dismissed, 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: October 5, 2015

Residential Tenancy Branch

