



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Amended DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for recovery of the filing fee for the cost of the application; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties provided evidentiary material in advance of the hearing, however the landlord did not provide any evidence to the tenant. Therefore, the landlord's evidence is not considered in this Decision.

The parties were given the opportunity to question each other respecting the testimony and evidence of the tenant, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more particularly for loss of enjoyment of the rental unit?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this month-to-month tenancy began on November 1, 2014 and ended on September 30, 2015, although the tenant physically moved out in mid-September. Rent in the amount of \$400.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$200.00 which was returned in full to the tenant. The tenancy includes a bedroom and the kitchen and common areas are shared with 2 others. The named landlord is not the owner but rents the home from the owner and sublets the bedrooms and common areas.

On July 21, 2015 the parties had a conversation that became aggressive and the landlord told the tenant that she had to move out. Then the landlord gave the tenant a letter stating that the tenant had to be out by August 21. The tenant replied with her notice to end the tenancy and on August 1, 2015 the tenant's friend personally served the landlord with the tenant's notice to vacate the rental unit effective October 31, 2015.

The tenant further testified that all that happened was not necessary and put too many people under too much stress. The tenant's friends and relatives were going to be visiting from Italy and the tenant had told the landlord about a year before they were to arrive. The landlord agreed that they could stay at the rental unit. Two friends were there during the last 2 weeks of August or so, and on September 2, 2015 the tenant's parents arrived. A week before they arrived the landlord changed her mind and said she didn't trust them and the tenant had to find alternate accommodation for them which included hotels some of the time. When they visited the tenant at the rental unit, neither the tenant nor the guests were permitted by the landlord to use kitchen utensils or any common things such as the table or chairs or couches. It was very uncomfortable for the tenant and her guests. Letters from the guests have been provided. The tenant's parents felt too uncomfortable to stay at the rental unit at all. The tenant could not visit with her company at all and her guests were also stressed. Rather than being civil about it, when the tenant tried to settle the matter with the landlord, the landlord used some foul language and called the tenant foul names. Other guests of the tenant brought their own utensils and cooking items because the landlord refused to allow them to use the ones in the kitchen. Letters from those guests have also been provided.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause dated August 5, 2015 with an expected date of vacancy of September 30, 2015. The tenant does not recall when it was received, but the reason was a lie: "Tenant is repeatedly late paying rent." The tenant testified that although the effective date of vacancy is the same

date that the tenancy ended the tenant moved out as a result of being fearful of the landlord's behavior, harassing the tenant with letters, stress and safety issues.

The tenant seeks monetary compensation in the equivalent of 2 month's rent, or \$800.00 and recovery of the \$50.00 filing fee.

The landlord testified that it was a difficult relationship, however before the tenant moved in, the parties had a verbal agreement. The tenant was told that the furniture belonged to a former tenant. The landlord told the former tenant about a dispute between the parties, and the former tenant said that he did not want the tenant to use any of the furniture or kitchen items.

The landlord further testified that the tenant asked at the beginning of the year, not the year previously, friends were coming from Italy and would stay for a week. They planned to travel together for a week as well. The landlord is not the owner but rents the rental unit from the owner and told the owner that the tenant was planning to have guests from Italy. The owner said that he did not want 2 extra people there because it's an old house with old plumbing.

The landlord denies using foul language while communicating with the tenant, but the parties had heated discussions. Things didn't work out so the landlord started putting things in writing. The tenant got quite emotional so the landlord didn't want to expose herself to that stress.

The landlord also testified that from a technical stand-point she didn't know that she had the same rights as a landlord, so she gave the tenant a letter incorrectly to end the tenancy. Then the tenant gave the landlord notice to end the tenancy but that would have ended the tenancy later than the landlord wanted. Rent is technically due on the last day of the month because the landlord pays rent to the owner on the 1st of each month. The tenant paid on the 1st. Also, the tenant was late with payment of utilities and didn't contribute to chores.

Analysis

The *Residential Tenancy Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

In order for the tenant to be successful in obtaining monetary compensation from the landlord, the onus is on the tenant to establish that the landlord breached the *Act* or the tenancy agreement. The *Act* also states:

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.

In this case, I find that the landlord simply didn't like the tenant and the landlord's testimony was excuses that are only partially believable. I do not accept that rent was payable on the last day of each month, considering the tenant moved in on the 1st day of a month, and if the landlord wanted rent paid on any other day, the landlord ought to have put it in writing. The landlord also testified that the tenant was late paying utilities, but there is no evidence that the tenant was required to, or if so, that they were paid late. I don't accept that a previous tenant of the landlord had any right, nor is there any evidence of ~~that~~ that a previous tenant had any color of right to prohibit ~~prohibiting~~ the tenant from using kitchen utensils or sitting on a couch or at a kitchen table. The landlord had an obligation to provide the accommodation that the parties agreed to at the beginning of the tenancy, and I find that the landlord has failed to do that.

With respect to the amount of compensation sought by the tenant, I find that the tenant had a roof over her head, and an order for 2 month's rent would be an award to penalize the landlord, which I have no jurisdiction to make. The tenant was inconvenienced and denied use of common areas for herself and her guests, and as a result I find that the tenancy was devalued by the landlord's actions for 2 weeks in each of the months of August and September, 2015, and the tenant is entitled to receive compensation in the amount of \$400.00.

The tenant did not lead any evidence with respect to the application that the landlord comply with the *Act*, regulation or tenancy agreement, and I dismiss that portion of the claim.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$450.00.

This order is final and binding and may be enforced.

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: December 23, 2015
Amended January 29, 2016

Residential Tenancy Branch

