



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, OPC, MNR, MND, MNDC, OLC, MNSD, 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 on February 13, 2016 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. A Monetary Order for compensation - Section 67;
3. An Order for the Landlord to comply - Section 62
4. An Order for the return of the security deposit – Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on March 1, 2016 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. An Order for damages to the unit - Section 67;
4. A Monetary Order for compensation - Section 67;
5. An Order for the retention of the security deposit - Section 38; and
6. 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. The Parties confirmed that the tenancy ended and rent was paid for the month the tenancy ended. As the claims in relation to an order of possession, the notice to end tenancy and compliance by the Landlord are only relevant to an ongoing tenancy I dismiss these claims of the Parties. As the rent has been paid to the end of the tenancy I dismiss the Landlord’s claim for unpaid rent.

Preliminary Matter

The Landlord states that the second named Landlord is not a co-tenant on the original tenancy agreement for the penthouse unit and is not a landlord. The Landlord states that this person is her common law spouse and an occupant of the penthouse unit. Section 6 of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. Accepting this undisputed evidence that the second named landlord in the Tenant's application is only an occupant of the main unit, I find that this person is not a landlord and amend the Tenant's application to remove the second named landlord in the application.

Issue(s) to be Decided

Are the Parties entitled to their respective claims for compensation?

Is the Landlord or the Tenant entitled to the security deposit?

Background and Evidence

On October 1, 2015 the Parties signed an agreement for the rental of a bedroom by the Tenant. Rent of \$700.00 was payable on the first day of each month. The Landlord collected \$350.00 as a security deposit. Both Parties believe that their dispute falls under the jurisdiction of the Act. The Tenant moved out of the unit on February 10, 2016. The Tenant had paid the rent for February 2016.

The Landlord states that the rental unit is a bedroom located within a unit being rented by the Landlord from a 3rd party. The Landlord states that the 3rd party gave the Landlord permission to rent the bedroom to the Tenant but the Landlord cannot find the note. The Landlord states that the Tenant has exclusive use of the bedroom that comes with a lockable door. The Landlord states that the Tenant has use of the common areas, including a living room and bathroom. The Landlord states that entry to the bedroom only occurred when the Tenant gave permission for the entry. The Tenant states that the bedroom only locked from the inside, that there was no exterior lock and that the Tenant was never given a lock for the bedroom door. The Landlord states that the Tenant was given a key for the exterior lock on the bedroom door.

The Landlord states that at the outset of the tenancy the Parties mutually conducted an inspection of the bedroom. The Landlord states that the move-in condition form was not completed in the presence of the Tenant and was based on their verbal agreement of the state of the unit. The Landlord states that a copy was provided to the Tenant who did not return it signed. The Landlord states that the Tenant's forwarding address was received in the Tenant's application for dispute resolution on February 20, 2016. The Landlord relied on this address to make its own application for dispute resolution.

The Tenant states that there was never any inspection of the bedroom nor was any condition report completed and provided to the Tenant. The Tenant states that the only document seen by the Tenant was the agreement to rent the bedroom.

The Landlord states that the Tenant's forwarding address was put on the move-out condition report after it was filled out by the Landlord. The Landlord states that no move-out inspection was offered because the police were involved and that the Landlord was told not to speak to the Tenant.

The Landlord states that the Tenant left the walls of the bedroom filthy and things were left behind. The Landlord states that it took her 3 hours to clean the bedroom and the shared bathroom. The Landlord states that her hourly rate for cleaning is \$20.00 per hour. The Landlord claims \$150.00 and states that this amount includes the costs of cleaning supplies for which the Landlord has not receipt. The Landlord provided photos of the unit. The Landlord could not identify any of photos that depict the dirty walls. The Tenant states that the bedroom was left reasonably clean and that while the floors could have been vacuumed the Tenant was not given any opportunity to finish cleaning the room as the Tenant called the police to monitor her move. The Tenant states that this was done as the Landlord had accused the Tenant of theft.

The Landlord states that the Tenant returned the storage and unit key but the Landlord has them changed as the Landlord did not feel safe. The Landlord claims \$40.00 in compensation. The Landlord states that the Tenant caused the Landlord to lose quiet

enjoyment of the unit and claims the equivalent of one month's rent. The Landlord states that the Tenant stole property of the Landlord and claims a total of \$2,100.00 in compensation for the stolen property. The Landlord states that she lost income while dealing with the tenancy and claims \$500.00.

The Tenant states that from December 2015 until the move out and on a weekly basis, the Tenant was verbally harassed, slandered and subjected to outbursts by another occupant of the unit, the Landlord's boyfriend. The Tenant states that the boyfriend made sexual comments and was rude, disrespectful and discriminatory. The Tenant states that the boyfriend also remained in the living room after 5 pm and slept on the couch. The Tenant states that she also was subjected to loud fights between the Landlord and the boyfriend that occurred one or twice a month. The Tenant states that she would usually leave when the fighting started. The Tenant states that she asked the Landlord to deal with the boyfriend's harassment and reduce the noise and that although the Landlord made some attempts the behavior continued. The Tenant states that in order to avoid the boyfriend's behavior the Tenant had to avoid using the common areas. The Tenant states that she lost quiet enjoyment of the unit and claims \$2,100.00 in compensation for the period December 2015 to February 2016 inclusive. The Tenant also claims an undetermined amount for harassment and slander.

The Landlord states that she never witnessed any harassment of the Tenant and that the Landlord's boyfriend either slept in the Landlord's bedroom or the spare bedroom. The Landlord states that there was one issue in December 2015 between the Tenant and the boyfriend and that the Landlord spoke with the boyfriend about the issue. The Landlord states that the Tenant and boyfriend were rarely alone. The Landlord states that the boyfriend avoided the Tenant. The Landlord states that she only fought with her boyfriend on their bedroom at the opposite end of the large penthouse unit. The Landlord states that the Tenant could not have heard anything unless she was sitting in the living room.

The Tenant states that the Landlord gave the Tenant a notice to end tenancy for cause on February 8 or 9, 2016. The Tenant states that the notice had no validity but the Tenant moved out of the unit anyway. The Tenant claims \$1,400.00 for an invalid notice to end tenancy. The Tenant states that the Landlord accused the Tenant of stealing property and of changing locks. The Tenant denies stealing any property and states that because of the Landlord's belief the Tenant was no longer safe in the unit and had to make an emergency move. The Tenant states that she lost work income in order to move out and claims an undetermined amount.

Analysis

Section 6 of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. Although the Landlord rents the penthouse from a 3rd party, accepting the evidence that the 3rd party gave permission for the Landlord to rent a secured bedroom in the penthouse to the Tenant, accepting that the Tenant has exclusive use of this bedroom, noting that a written agreement for the use of that bedroom was entered into between the Parties and considering that the Landlord collected a security deposit, I find that the Act applies to the relationship between the Parties.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. Given the lack of photos showing an unclean unit, considering the Tenant's evidence of cleaning and given the significant amount being claimed by the Landlord for cleaning I find that the Landlord has failed to substantiate the costs claimed for cleaning and I dismiss this claim. Given that the Tenant returned the keys to the unit I find that the Landlord has failed to substantiate that the Tenant breached its obligations to return the key and I dismiss the claim for changing the locks.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage

or loss that results. As there is nothing in the Act or tenancy agreement that provides a landlord with quiet enjoyment I dismiss the claim for \$700.00. As the Landlord has not provided evidence that the Tenant breached the tenancy agreement or Act in relation to theft of the Landlord's property, I find that the matter is not covered by the Act. I therefore dismiss the claim for compensation for stolen property. As there is nothing in the Act that compensates a landlord for dealing with a tenancy, I dismiss the Landlord's claim for lost income.

Section 35 of the Act provides that a landlord must offer a tenant 2 opportunities to carry out an inspection at the end of a tenancy. Section 36 of the Act provides where the landlord fails to make the 2 offers the right of the landlord to claim against a security deposit for damage to residential property is extinguished. Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

As the Landlord failed to offer the Tenant an opportunity to conduct a move-out inspection and considering that there is no evidence that a 3rd party could not act as agent for the Landlord to conduct the inspection I find that the Landlord's right to claim against the security deposit for damages to the unit to be extinguished. However as the Landlord still had claims against the Tenant beyond damages to the unit, I find that the Landlord could hold the security deposit pending the outcome of this application and that the Landlord is therefore not required to pay the Tenant double the security deposit. As none of the Landlord's claims had any merit in effect the Landlord's application is dismissed in its entirety and the Landlord must return the security deposit plus zero interest of **\$350.00** to the Tenant forthwith.

As the Tenant has not provided any evidence that the Landlord harassed or slandered the Tenant and as there is no provision under the Act for damages to a tenant from

another occupant of a rental unit, I dismiss the Tenant's claim for compensation for harassment and slander.

I accept the Landlord's evidence that the fights with the boyfriend only occurred in the bedroom and that the Tenant could only have heard them if sitting in the living room. I do not find this evidence to indicate any significant disturbance. I do find however the Tenant's evidence of behavior by the boyfriend towards the Tenant to be credible and persuasive. I also accept that the Landlord failed to do anything to remedy the situation other than to evict the Tenant. As a result I find that the Tenant's right to quiet enjoyment was disturbed. However given that the Tenant only provided evidence of loss of the common areas I find that the amount being claimed by the Tenant is excessive and that the Tenant is only entitled to a nominal amount of **\$200.00** for this loss.

As the Tenant's application has had some merit I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$650.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$650.00**. 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: April 12, 2016

Residential Tenancy Branch