



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the hearing the Tenant asked to amend its application to reduce the total monetary amount claimed from \$25,000.00 to \$2,090.00. As this amendment does not prejudice the Landlord, I grant the amendment.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Background and Evidence

The tenancy started on or about May 2009 and ended on October 31, 2013. Rent of \$380.00 was payable on the first day of each month.

The Tenant states that in 2012 he was diagnosed with depression and psychotic episodes. The Tenant states that the tenancy was non-smoking inside the suite containing the Tenant’s unit bedroom. Smoking was allowed outside the suite. The Tenant states that another tenant smoked outside by the door and that the smoke came

into the Tenant's bedroom window that had broken seals. The Tenant states that this occurred throughout the tenancy and although the Tenant complained early and throughout the tenancy, the Landlord only said they would discuss the matter to resolve it but that no discussions with him happened. The Tenant states that the smoking caused a pronounced affect by summer 2013 including the appearance of a cough, pain in the chest, loss of sleep, not bathing or changing clothes. The Tenant states that the effects of the second hand smoke affected the Tenant's ability to cope and that he withdrew and was isolated as a result. The Tenant provided a medical note that indicates that the Tenant is strongly affected by second hand smoke.

The Tenant states that he was harassed by the Landlord and the other tenants and that once the Tenant raised concerns one of the tenants moved out. The Tenant states that at first it was just a feeling of being harassed but that over the course of the tenancy the Tenant was able to make some sense out of the behaviors of the others. The Tenant states as an example of harassment that on three occasions over a year the Landlord told the Tenant that the Tenant was breaking up the Landlord's marriage. The Tenant states that this made him depressed and that the accusation was like "a shot to the gut". The Tenant states that the Landlords would also each separately approach the Tenant to tell the Tenant to pay that particular Landlord and not the other for the rent. The Tenant states that he overheard the Landlord say the "he" thinks he has rights. The Tenant states that the Landlord would talk about the Tenant to the others and that this affected the Tenant leaving him feeling disliked and that his rights advocacy caused marital problems.

The Tenant states that on August 1, 2013 he sent a letter to the Landlord outlining the problems and that on August 2, 2013 when the Tenant went to pay the rent the Landlady had him sit down while the Landlord's grandchildren threatened to beat him up. The Tenant states that the Landlady stopped them and encouraged him not to call the police. The Tenant states that the police were called however nothing came of it. The Tenant states that the police told him the situation was resolved and that the Landlords could do what they wanted. The Tenant states that whenever he raised an

issue nobody would take responsibility and there was ongoing inaction by the Landlord. The Tenant states that he felt besieged. The Tenant states that near the end of the tenancy he overheard the Landlady call him crazy and that he believed the Landlady followed him by car on three occasions.

The Advocate argues that for any other individual the incidents portrayed by the Tenant may not seem so bad but given the Tenant's mental condition the incidents and comments by the Landlords and other tenant were significantly damaging and amounted to the persecution of a mentally unhealthy person. The Advocate concedes that there is nothing to indicate that the actions of the Landlord contributed to the deterioration of the Tenant's mental state.

The Landlord states that during the tenancy the Tenant always looked sad and that the Landlords and other tenants were very concerned about the Tenant. The Landlord states that they would always try to get the Tenant to go out, would try to protect him and made efforts to be kind but that the Tenant would rebuke their efforts and be miserable. The Landlord states that the Tenant was unkind to everyone and complained about everything.

The Landlord states that the tenant who smoked was a long term tenant who developed cancer near the end of his life but continued to smoke as this was his only enjoyment left. The Landlord states that this tenant would walk to the beach to smoke but when the illness and treatment became bad the tenant could no longer walk and sat outside the door for his smoking. The Landlord states that the bedroom windows were checked and the seals were not broken. The Landlord states that the Tenant was told at the outset of the tenancy that this tenant smoked and was allowed to smoke outside the unit. The Landlord states that when the Tenant did complain the situation was explained to the Tenant and that the Landlord ensured that the door to the suite would be closed.

The Landlord denies that the grandchildren threatened the Tenant and that they were present to help the Landlords with their roof. The Landlord states that the Tenant had been leaving nasty letters on the other tenant's door and that these letters were a "bunch of crock". The Landlord states that her husband wanted her to evict the Tenant over his behavior but that the Landlord only encouraged the Tenant to move out. The Landlord states that she has better things to do than to follow the Tenant for any reason and that the bathroom in the common area was cleaned 2 - 3 times each week. The Landlord states that the Tenant imagines things, complains for no reason and acts like he is persecuted. The Landlord states that she felt sorry for the Tenant and tried to help him.

Analysis

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. Given that there was no evidence that the Tenant's right to a smoke free interior environment was breached and accepting that the Tenant knew in advance of the smoker outside, I find that the Tenant has not substantiated any breach from which damages may accrue. I therefore dismiss the claim in relation to smoking.

Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". While the Tenant did not provide any medical evidence to support the extent of the Tenant's illness, I do accept that the Tenant suffered or suffers from an illness and I do feel empathy for this Tenant because of this illness. However there is no evidence that the Landlord was made aware of the Tenant's illness and there is no evidence that the Landlord caused the Tenant's illness to be worse. The examples of harassment provided by the Tenant do not show an ongoing or repetitive course of action. On the contrary it appears that the Tenant was unhappy by the Landlord's inaction. Further I accept the Landlord's evidence that the Tenant was sad, angry and hostile and as a result was difficult to deal with. While the Tenant may have subjectively felt wronged by the Landlord's behavior, I cannot find anything objectively vexatious in

the examples provided by the Tenant. For these reasons, I find on a balance of probabilities that the Tenant has not substantiated that the Landlord harassed the Tenant causing the Tenant harm. I therefore dismiss the claim for compensation in relation to harassment. In effect the application is dismissed in its entirety.

Conclusion

The application is dismissed.

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: June 3, 2016

Residential Tenancy Branch