



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC

Introduction

On May 13, 2016, the Tenant submitted an Application for Dispute Resolution asking that a 2 Month Notice to End Tenancy for Landlord Use of Property ("the Notice") be cancelled, and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the Act), regulation or tenancy agreement.

Both parties appeared at the hearing. The Landlord was assisted by her legal counsel M.D. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

Within the past year, this is the fifth dispute resolution hearing between the parties. At the start of the hearing I exercised my authority under section 63 of the *Act* to offer the parties an opportunity to settle the dispute. Both parties made settlement proposals for compensation to end the tenancy but ultimately an agreement between the parties could not be reached.

During the hearing the Landlord's counsel explained that the 2 Month Notice to End Tenancy for Landlord Use of Property dated April 30, 2016, was being withdrawn. The reason for the Notice is that the rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlords spouse.

Since the Landlord has rescinded the Notice, the Notice is set aside and the hearing will proceed on the remaining claim for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the Act), regulation or tenancy agreement.

The Landlord's counsel requested more time to review and consider the evidence received from the Tenant on June 2, 2016. The Landlord's counsel submits that the hearing could continue as

though the Tenant submitted no evidence in support of her application. The Landlord's documentary evidence indicates that the evidence was delivered on June 1, 2016. The Landlord's request is denied pursuant to the Residential Tenancy Branch Rules of Procedure 3.14, as the evidence was received before the hearing in accordance with the rules of procedure.

Issues to be Decided

Is the Tenant entitled to money owed or compensation for damage or loss under the *Residential Tenancy Act* (the Act), regulation or tenancy agreement?

Background and Evidence

Based on the hearing record before me, the monthly rent is \$600.00 and the tenancy began on February 1, 2015.

The Tenant is seeking a monetary order in the amount of \$10,000.00. The Tenant has attached a four page document to her application setting out her claim. She states that the monetary compensation is for the breach of her quiet enjoyment of the tenancy; Landlord neglect of repairs; cumulated aggravated damages for fraudulent evictions; Landlord lying under oath; and administrative penalties levied against the Landlord. The Tenant submits that her claim must be examined against the four attempted evictions over the past year.

The Tenant has provided documentary evidence of the decisions from four previous hearings in support of her claim. For ease of reference, I have included the file numbers from these previous hearings on the cover page of this decision. The documentary evidence shows there were four previous hearings to dispute Notices to end the tenancy issued by the Landlord as follows:

- On July 20, 2015, a hearing was held to dispute a 2 Month Notice to End Tenancy for Landlord's Use Of Property dated May 23, 2015, issued for the reason that the rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlords spouse. The Arbitrator's decision upheld the Notice and ordered the Tenant to vacate the rental unit by August 1, 2015.
- On October 30, 2015, a new hearing granted by Review Consideration was held regarding the 2 Month Notice To End Tenancy for Landlord's Use Of Property dated May 23, 2016. The Arbitrator's decision found that the Landlord provided insufficient evidence to uphold the 2 Month Notice to end tenancy and the 2 Month Notice was cancelled.
- On November 5, 2015, a hearing was held to dispute a 1 Month Notice To End Tenancy for Cause dated August 28, 2015, issued for the reason that the rental unit must be

vacated to comply with a government order. The Arbitrator's decision was that the Landlord failed to meet the burden of proving that the tenancy must end to comply with a municipal order and the 1 month Notice was cancelled.

- On April 21, 2016, a hearing was held to dispute a 2 Month Notice To End Tenancy for Landlord's Use Of Property dated February 19, 2016, issued for the reason that the rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlords spouse. The Arbitrator's decision was that the Landlord has submitted insufficient evidence to establish that her daughter intends to move into the rental unit. The 2 month Notice to end tenancy was set aside.

The Tenant submits that the hearings have established that the Landlord has lied and consistently tried to fraudulently evict her. She submits the Landlord's Notices were issued in bad faith.

The Tenant submits that the Landlord's actions are a theft of the Tenant's time and energy. She submits that the Landlord has forced her to take an extremely time consuming and stressful job to fight the fraudulent evictions. She submits that over the past year she has not had much of a life because she experiences mind numbing full time stress due to fighting the evictions.

The Tenant requests, "... adequate fair, just monetary compensation to show BCRTB's commitment to crack down on bad landlords who commit crimes that in a regular police case or legal criminal investigation case would be put in jail and or severely fined." [Reproduced as written.]

The Landlord's counsel submits that I do not have the jurisdiction to award damages in relation to the previous hearings. He submits that the basis of the Tenant's claim is due to previous conduct and that damages cannot be awarded for the conduct which occurred prior to the hearing.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

...Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering.

Section 28 of the Act regarding the protection of a Tenant's right to quiet enjoyment states:

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.*

Upon reviewing the decisions from the previous hearings, I do not find that there was a finding of fraud on the part of the Landlord. The previous decisions state that the Landlord has failed to meet the good faith requirement; the Landlord has failed to prove the tenancy must end to comply with a municipal order; and that the Landlord has submitted insufficient evidence to establish that a family member is moving in. For example, the decision of the arbitrator from the April 21, 2016, hearing states:

As the Landlord has submitted insufficient evidence to establish that her daughter intends to move into the rental unit, I find there is no reason to also determine whether the Notice to End tenancy was served in good faith. The Landlord is cautioned however that her ability to prove good faith in the future may be impaired by these continued attempts to end the tenancy.

In this hearing, the Landlord withdrew the Notice that gave rise to part of this hearing and no testimony from the Landlord was provided to substantiate the reason for the Notice. I find that there is a distinction between not being able to prove good faith and acting in bad faith. As I

have not adjudicated the validity of the most current 2 Month Notice, I make no finding in this decision that the Landlord was fraudulent or acting in bad faith.

With respect to the Tenant's claim for compensation due to aggravated damages, the Tenant has provided insufficient evidence to support her claim for pain and suffering. There is no medical evidence from the Tenant to support her claim for pain and suffering, or that she suffered damage or loss.

The Landlord has a right under the *Act* to issue a Notice to end tenancy. While the Landlord failed to prove the tenancy must end in the previous hearings, I do not find the conduct of the Landlord in issuing the Notices was egregious.

The bulk of the compensation of \$10,000.00 that the Tenant is seeking appears to be punitive and more in line with an administrative penalty under the *Act*. I find that this seems to be consistent with the Tenant's intentions of the remedy she is seeking from this Application. I do not have the authority to adjudicate administrative penalties. The dispute resolution process is not the mechanism for seeking administrative penalties. The Tenant should call the Residential Tenancy Branch and speak with an Information Officer if she wants to pursue an administrative penalty.

While I have found that the Landlord has a right to issue a notice to end tenancy and that the Landlord's actions of issuing multiple Notices to end tenancy were not egregious, I do find that the cumulative result of the Landlord's actions has created a loss of quiet enjoyment to the Tenant. Three of the Notices to end tenancy that the Landlord issued contain the same reason for ending the tenancy. The Tenant disputed all of the Notices and has been forced to appear at several hearings to dispute these, over the course of several months, since the first Notice was issued.

I find the issuance of these Notices in part caused the Tenant to experience a loss of quiet enjoyment while living at the rental unit over this time period. Therefore, I award the Tenant the sum of \$400, comprised of eight months of loss of quiet enjoyment at \$50.00 per month.

Conclusion

The 2 Month Notice to End Tenancy for Landlord Use of Property dated April 30, 2016, is set aside. The tenancy continues until ended in accordance with the *Act*.

The Tenant is awarded a monetary order in the amount of \$400.00.

I caution the Landlord that further instances of serving Notices to End tenancy without sufficient cause and evidence to support these, may entitle the Tenant to further monetary compensation. The Landlord is warned that his type of behaviour by the Landlord may even cause the Landlord to attract administrative penalties in the future.

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: July 14, 2016

Residential Tenancy Branch