



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WILSON RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for loss as a result of the tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that this tenancy began over 20 years ago. There is no written tenancy agreement. The current rental amount of \$898.80 is payable on the first of each month. The tenant resides in the two bedroom rental unit within a 21 unit apartment building. The landlord holds a \$100.00 security deposit paid by the tenant at the start of this tenancy.

The landlord did not submit any documentary materials for this hearing. The tenant submitted letters sent to the landlord by the tenant as well as photographic evidence to illustrate the condition of the residential premises. The tenant also provided written submissions and provided a 'report to council' regarding the site/property manager/landlord representative who maintained the building prior to the current manager/attendee at this hearing.

The tenant testified that from approximately 2014 to 2015, an unscrupulous property manager allowed to remain in custody of the residential premises led to what the tenant described as horrendous conditions for the residents including her. She testified that she voluntarily became the “back-up caretaker” after this manager ignored the condition of the unit to a point where the tenant believed that the safety and health of the residents were in jeopardy. Furthermore, she testified that the manager’s failure to take steps to address a variety of issues on the residence included a failure to penalize or evict tenants who were rampant drug addicts and partiers thereby resulting in a loss of her quiet enjoyment of her own home.

The tenant provided a descriptive example of the style of management of manager LS, the previous manager. She testified that, shortly after he began managing the property, she called him to report crows in the alley flying and tearing at a dead rat that was on the premises. She asked him for clean-up. She testified that the manager asked her, “what the H--- am I supposed to do?” She testified that she disposed of that and approximately 4 other rats on her own rather than be faced with any other ‘unnecessary’ conversations with the manager LS over the course of his reign.

The tenant testified that, after she and other tenants were threatened with eviction if they raised complaints, she decided to take matters into her own hands. She testified that she was fearful of any communication with manager LS and did not have another contact person or number for the landlord. Therefore, the tenant testified that she would clean up and address maintenance issues in the residence as she was able and when they arose.

The tenant testified that she realizes she didn’t have approval to complete caretaker work on the premises and does not want to be compensated directly for that work but felt that she had no choice in the circumstances beyond vacating the residence. As this apartment building has been her home for approximately (30-40) years, the tenant testified that she decided to take on some responsibilities for her home and its surroundings.

The landlord’s representative (“manager VV”) testified that he became property manager in August 2015. He testified that he has reviewed the materials submitted by the tenant and that the majority of repair related issues raised by the tenant have now been addressed or are in the process of being addressed. Manager VV testified that he receives a complaint or request from the tenant approximately every 2 weeks. He testified that there were no outstanding requests or complaints from the tenant that he was aware of when he became building manager.

The landlord testified that there had previously been issues with tenants using hard drugs on the premises and that he has curbed all of that activity. Furthermore, he testified that it was his opinion that the premises were not in bad shape after the other property manager left. In describing why the previous property manager left, he testified that the manager had been suspected of theft related to significant amounts of tenant rent.

The landlord testified that he has no personal knowledge nor has not heard of the health, safety and general maintenance issues described by the tenant. He testified that he is aware the tenant watches over the building and its tenants (reporting activity) and that he is aware she has done some clean up type work however he stressed that the tenant was never authorized to do so .

The tenant sought \$1787.60 (equivalent to two months' rent) as compensation for the inconvenience, disruption and disturbance as a result of the actions or inaction of the previous manager as well as the ongoing disturbances as a result of tenant behaviour and inconsistent response to requests for maintenance.

Analysis

When a landlord and tenant enter into a tenancy agreement, written or verbal, each is expected to meet their responsibilities under the *Act*; a tenant is expected to pay rent; a landlord is expected to provide the premises as agreed to. If a tenant is deprived of the use of all or part of the premises, the tenant may be entitled to damages. The types of damages an arbitrator may award are; out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act*; an amount reflecting a general loss where it is not possible to place an actual value on the loss; "nominal damages" 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; and finally aggravated damages for significant infractions by the landlord to the tenant.

In this case, the tenant has proven that the landlords failed to honour the residential tenancy agreement and their obligations under the *Act*. I accept the testimony of the tenant that the previous manager treated the tenant poorly and verbally abuse her as well as other tenants. I accept the testimony of the tenant that the residential premises were not maintained sufficiently during the time that this individual managed the building. I accept the testimony of the landlord/current manager that the residential premises has been improved since he has managed the building. I find the manager's testimony that there were no outstanding requests or significant problems at the building at the end of the previous manager's time in charge unsatisfactory.

Given all of the evidence provided by both parties, regarding theft by the previous manager as well as issues of blatant drug use, I find that it is likely that the previous manager did not sufficiently upkeep the residence. I accept the testimony of the tenant that she took it upon herself to improve the conditions at the building for a period of time. While the tenant cannot be compensated for her voluntary decision to preserve her own building and residence, I find that the tenant is entitled to nominal damages in an amount that reflects the significant disturbance and disruption she suffered under the prior management.

In all of the circumstances described, I find that the tenant is entitled to a nominal damage award in the amount of \$500.00 as well as the cost of the filing fee for this application (\$100.00).

Conclusion

I issue a monetary order to the tenant in the amount of \$600.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, this Order may be filed in the Small Claims Division of the Provincial 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: August 19, 2016

Residential Tenancy Branch