



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72; and
- an "other" remedy.

The tenant and landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenant's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was served with the application.

The filing fee was waived consequently this portion of the tenant's claim is dismissed without leave to reapply.

The tenant did not provide testimony or evidence in relation to the other remedy he sought in his application therefore this portion of his claim is dismissed without leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on February 1, 2015 on a fixed term until February 1, 2016 at which time the tenancy ended. Rent in the amount of \$595.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$297.50 at the start of the tenancy. The tenant vacated the rental unit at the end of January 2016.

Tenant

The tenant is seeking \$15,000.00 in damages for harassment and loss of quiet enjoyment. The tenant testified that the caretaker harassed him in relation to the kitchen an estimated fifty times during a two year period. Specifically the caretaker harassed the tenant concerning the microwave, demanding that the tenant replace it with a new unit. Additionally the tenant testified that the caretaker harassed him in relation to smoking an estimated hundred times over the duration of two years. The caretaker used demeaning and degrading language to humiliate the tenant as a smoker. The tenant is seeking \$100.00 in compensation for each instance of harassment. The tenant stated that he reported this harassment to the landlord on multiple occasions but nothing was done to rectify it. The tenant specified that he is seeking aggravated damages because his rights were abused on a constant basis.

Landlord

It is the landlord's position that the tenant's claim in damages is in response to his tenancy not being renewed. In December of 2015 the tenant's neighbour reported to the landlord that the tenant had engaged in marijuana smoking in his rental unit. With this knowledge the landlord chose not to renew the tenant's fixed term tenancy and advised the tenant of such. The tenant threatened the landlord with lawsuits and subsequently filed an application with the Residential Tenancy Branch.

The landlord testified that he only received complaints from the tenant regarding the caretaker's behaviour after the tenant was advised that his tenancy would not be renewed. The landlord acknowledged that the caretaker is senior and admittedly deaf who sometimes uses rude language. The landlord contended that this behaviour is not directed at anyone in particular.

Analysis

As per section 28 of the *Act* a tenant's entitlement to quiet enjoyment include rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit and use of common areas for reasonable and lawful purposes, free from significant interference.

In respect to a monetary claim for damages to be successful an applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with evidence and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Residential Tenancy Policy Guideline, "6. *Right to Quiet Enjoyment*" establishes that a tenant seeking damages for the loss of quiet enjoyment must show a course of repeated or persistent threatening or intimidating behavior.

I prefer the testimony of the landlord over the tenant. The landlord was consistent in his testimony and did not waiver in his version of what happened. The tenant's evidence, on the

other hand, lacked credibility. The tenant was vague in describing the instances of harassment and provided no dates of the alleged instances or reports of the instances to the landlord. In the absence of dates, the tenant could not substantiate the frequency in which the alleged harassment took place. Further, the tenant's evidence in the form of emails was riddled with retaliatory comments and proclamations of quick cash if proven successful in arbitration.

The landlord's testimony and tenant's emails have persuaded me on the balance of probabilities that the tenant filed his claim in response to the non-renewal of his tenancy agreement and in an effort to obtain some retaliatory compensation.

Despite the above, based on the landlord's own admission, I find it probable that the caretaker did use foul language and at times the tenant was the recipient of this language. However I find the tenant has failed to prove the severity or frequency of this to warrant \$15,000.00 in compensation. For these reasons, I award the tenant a nominal award in the amount of \$50.00.

As the tenant did not claim a specific amount in aggravated damages, I dismiss this portion of the tenant's claim without leave to reapply.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$50.00.

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 24, 2016

Residential Tenancy Branch