



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, submitted to the Residential Tenancy Branch on March 18, 2016, and amended on March 29, 2016 (the "Application").

The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"): an order cancelling a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated March 5, 2016; a monetary order for money owed or compensation for damage or loss; an order for the return of all of the security deposit or pet damage deposit; and an order granting the Tenant recovery of the filing fee.

The Tenant attended the hearing on his own behalf. The Landlord attended the hearing on her own behalf and called one witness, D.C. All parties giving evidence provided their solemn affirmation.

Neither party expressed concern regarding receipt of the Notice of a Dispute Resolution Hearing. Both parties were in attendance.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to 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 and Procedural Matters

The Adjournment. This hearing was originally scheduled on July 13, 2016. At that hearing, the Tenant requested an adjournment to submit documentary evidence in the form of a medical report related to health concerns he says were caused by the condition of the rental unit. The adjournment was granted and the Tenant was ordered to submit all evidence upon which he intended to rely by July 27, 2016. The hearing was subsequently rescheduled on September 2, 2016.

The Tenant's Claims. At the hearing, the status of the Tenant's claims was discussed with the Tenant. First, it was agreed that the Tenant no longer requires an order cancelling a notice to end tenancy as the Tenant moved out of the rental property on May 2, 2016.

Second, it was agreed that the Tenant is not entitled to return of the security deposit as it was dealt with by another arbitrator in a decision dated May 16, 2016. The file number of the previous proceeding is included on the cover page of this decision for ease of reference.

Finally, it was confirmed that the Tenant is not entitled to recover the filing fee. The Tenant applied for and was granted a "fee waiver" when he submitted the Application.

Accordingly, the only issue to be addressed in this decision is the Tenant's request for a monetary order for money owed or compensation for damage or loss under the *Act*, regulations, or the tenancy agreement.

Evidence. The Tenant's documentary evidence consisted of a 1-page letter from the Tenant's physician, advising that the Tenant was hospitalized in March 2016 for an unspecified illness. The Landlord advised that the letter was not received.

The letter was described to the Landlord and the body was read aloud during the hearing. The body of the letter states: "I saw this patient on [July 26, 2016] and can confirm that this patient was seen in the ER in March 2016 and has been followed for this medical issue since that time."

The letter provides insufficient detail to be of any use to me in these proceedings.

Similarly, the Tenant says he did not receive the Landlord's evidence package, received at the Residential Tenancy Branch on July 20, 2016. However, referring to a Canada

Post receipt, the Landlord confirmed the evidence package was served on the Tenant by registered mail on July 19, 2016, and that Canada Post tracking information indicated the package was forwarded to the Tenant's new address but was refused there.

I am satisfied the Landlord's evidence package was served on the Tenant by registered mail on July 19, 2016. Pursuant to section 88 and 90 of the *Act*, documents served in this manner are deemed to be received on the fifth day after being mailed. Accordingly, I find the Tenant is deemed to have received the Landlord's evidence package on July 24, 2016.

Issue to be Decided

Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulations, or the tenancy agreement?

Background and Evidence

A written tenancy agreement was not submitted with the documentary evidence of either party. However, the parties agreed a month-to-month tenancy began on or about February 1, 2008. Rent was paid to the Landlord in the amount of \$600.00 per month. The Tenant also paid the Landlord a security deposit, which was dealt with in a previous arbitration decision, dated May 16, 2016. The file number of the previous decision is referenced on the cover page for ease of reference.

The Tenant was given the opportunity to provide oral testimony regarding the condition of the rental unit and the impact on his health. He testified he suffers from a lung condition that has resulted in at least one hospitalization. The Tenant alleges the condition was caused by the poor condition of the rental unit. Specifically, the Tenant says the rental unit contained mold and bacteria as a result of excess moisture, and was in a state of disrepair.

In addition, the Tenant suggested gasses from underground mines below the rental unit and in the area have been contributing factors to his health concerns, and testified that staff at the hospital advised him not to return. The Tenant also testified to his belief there has been a puppy mill and a marijuana grow-op on the property.

The Tenant was invited to describe his health condition. He advised that his lungs fill up with green/yellow pus, and that he suffers from depression. He says he has been

unable to work as a result of his health problems. The Tenant testified that others have experienced similar health issues, but provided no specific examples.

The Tenant also stated he suffered a herniated disc, but did not clarify how this was related to the condition of the rental unit.

The Tenant testified he has incurred expenses as a result of the problems he has been experiencing. He stated he has incurred hotel expenses, moving expenses, storage expenses, and the filing fee (see Preliminary and Procedural Matters, above). However, the Tenant provided no documentary evidence in support of these expenses. When asked to provide me with totals from his copies, he was unable to locate them.

The Landlord provided oral testimony in reply. She confirmed the previous tenant had lived in the property for about 20 years. Although the Landlord intended to make some updates when the previous tenant moved out, the Tenant was eager to move into the rental unit as it was. She stated he was aware of the condition of the rental unit when he moved in and that the rent was reduced as a result. The Tenant lived in the rental unit for almost eight years.

Although she acknowledged the rental unit was in need of updating, the Landlord denies any moisture or mold issue. In the Landlord's written submissions, she advised the rental unit has undergone fairly extensive renovations involving the removal of carpets, baseboards, and bathroom. None of the contractors, she says, have raised any concerns about moisture or mold. The Landlord stated there have also been no complaints from the subsequent tenants.

The Landlord denies that the condition of the rental unit contributed in any way to the Tenant's health concerns, and points to the lack of documentary evidence of a causal relationship between the condition of the rental unit and the Tenant's alleged health issues.

The Landlord also noted that the Tenant smokes cigarettes and suffered from seasonal allergies, suggesting the cause of the Tenant's health issues may be attributed to other factors.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find the following:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with this *Act*, the Regulations or a tenancy agreement.

While I believe the Tenant is experiencing serious health concerns, I find there is insufficient evidence before me to conclude the condition of the rental unit is the cause.

Having found there is insufficient evidence to establish a causal relationship between the condition of the rental unit and the Tenant's health concerns, and in the absence of supporting documentary evidence, decline to make any award for expenses claimed by the Tenant.

In light of the above findings, the Tenant's Application is dismissed, without leave to reapply.

Conclusion

The Tenant's Application is dismissed, without leave to reapply.

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: September 6, 2016

Residential Tenancy Branch