



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC OLC RPP FF

Introduction:

Both parties attended the hearing and the tenant confirmed personal service of the one month Notice to End Tenancy and said he served his Application for Dispute Resolution by registered mail. The landlord said she never received the Application. I confirmed online that it was mailed July 21, 2016, a delivery attempt was made, notices were left and when the landlord failed to pick it up, the registered mail was returned to the sender. I find the landlord is deemed to be served pursuant to section 90 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7 and 67 as compensation for being evicted;
- b) To order return of his personal property pursuant to section 65;
- c) To order the landlord to comply with the Act; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord through act or neglect caused him to suffer damages for which he should be compensated? If so, how much compensation has he shown entitlement? Is he entitled to recover the filing fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy began January 1, 2015, rent was \$700 and no security deposit was paid. The landlord said the tenant worked with her husband and relations were good until the spring of 2016 when the tenant began to exhibit mood swings. She told him he could use a portion of her garden which he did for a short period of time. She said her husband told her that the tenant's behaviour had changed at work; they had some disagreements so he asked her to collect the rent from the tenant. About June of 2016, she said the tenant began making strange noises, yelling, swearing and banging on the walls. She gave him a Notice of

Inspection to look at the suite on July 2, 2016 and she was distressed to see garbage and grocery bags lying around and making the suite messy. She said the tenant told her he was going to leave anyway so she gave him the One Month Notice to End Tenancy for Cause. He was significantly disturbing the peaceful enjoyment of her husband and herself upstairs by his strange behaviour, yelling and banging. She provided a video showing a large amount of garbage bags in the unit.

The tenant said he left on August 2, 2016 because of the hostile environment. He said the landlord was constantly watching and monitoring him. He said he paid \$675 rent for July 2016 (\$25 deducted because the landlord had not fixed the toilet) and did not pay rent for August. He is requesting compensation of \$4448.20 for illegal eviction. This amount is comprised of \$300 for lost time at work while looking for another place, \$300 for a moving truck, \$300 for loss of his vegetable garden and \$600 for the extra rent he has to pay at his new unit. The tenant provided a video showing him looking at the secondary suite guide and pointing out deficiencies in his unit, a video of his garden stating the dogs had got at it and a video showing the suite empty and clean and some items broken such as a light bulb and refrigerator handle. He had receipts for his expenses.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find insufficient evidence that the landlord violated the Act or any agreement. I find the landlord served a Notice to End Tenancy for cause pursuant to section 47 of the Act, alleging the tenant significantly interfered with and unreasonably disturbed their peaceful enjoyment. In the hearing, the landlord testified how the tenant's behaviour had changed and his yelling, swearing and banging on the walls disturbed her and her husband. I find under section 47, the landlord is legally entitled to give such a Notice. Although the tenant filed a dispute, he left voluntarily on August 2, 2016. Based on these facts, I find he was not illegally evicted but chose to leave in response to the section 47 Notice. I find the tenant and husband had some disputes at work which likely led to disturbances at home. I find the landlord issued the Notice because they had genuine concerns about the tenant's behaviour. I find insufficient evidence that the Notice was issued illegally or that the tenant was illegally evicted.

Since I find the landlord did not through act or neglect cause damages to the tenant, I find he is not entitled to any compensation for his damages.

Conclusion:

I dismiss the Application of the tenant in its entirety without leave to reapply and without recovery of the filing fee due to his lack of success.

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 07, 2016

Residential Tenancy Branch