



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

These hearings were convened by way of conference call concerning an Application for Dispute Resolution (the “Application”) made by the Tenant on November 20, 2015 for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation, or tenancy agreement; and to recover the filing fee.

The first hearing which took place on June 27, 2016 was adjourned to allow the exchange of the parties’ evidence. The reconvened hearing took place on August 18, 2016; however, that reconvened hearing had to be adjourned due to the Landlord’s illness. The full details of the reasons for adjournment are detailed in my Interim Decisions dated June 27 and August 18, 2016.

The Landlord and Tenant appeared for the hearings and provided affirmed testimony. The Landlord confirmed receipt of the Tenant’s Application and that the parties had exchanged evidence pursuant to the directions I provided them in my Interim Decisions. No further issues with regards to the service of documents under the Act and the Residential Tenancy Branch Rules of Procedure were raised by the parties. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party and the witness on the evidence provided.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation for utilities, harassment, and loss of quiet enjoyment of the tenancy?

Background and Evidence

The Landlord dialed ten minutes late into the hearing, after which I recapped with the Landlord about the testimony that had been provided by the Tenant. The parties agreed that this tenancy for the upper portion of the rental home started on December 1, 2011

for a fixed term that was not due to end until December 31, 2012; however, a new tenancy agreement was entered into on April 1, 2012 for a fixed term tenancy that did not end until December 31, 2012. The tenancy then proceeded as a month to month tenancy thereafter.

Rent was payable by the Tenant in the amount of \$1,400.00 on the first day of each month. The Tenant was required to put the utilities of the entire rental home in her name and was given permission to deduct 50% of the utilities from her rent each month.

The Tenant was asked to present evidence in relation to her monetary claim which was split into two parts. The first part sought reimbursement of utilities for the months of September and October 2016. The Tenant realised during the hearing that she had already deducted her utility payment for September 2016 from that month's rent and withdrew this portion of the claim.

The Tenant then claimed \$238.50 from the Landlord for October 2016 rent because she did not have the opportunity to make this deduction from October 2016 rent because the parties were undergoing a separate dispute; the file numbers for which are detailed on the front page of this Decision. The Landlord did not dispute this amount was payable to the Tenant and acknowledged that the Tenant must be reimbursed for this.

In the second portion of the Tenant's monetary claim, she claims for 30% of her August and September 2015 rent for harassment and peaceful and quiet enjoyment of the property. The Tenant stated as the harassment got worse in October 2015, she claims for full rent of October 2015 she paid to the Landlord. The Tenant stated that she did not know how to assign a value on the harassment and loss of enjoyment she experienced in this tenancy but that the amounts she claims are reflective of this.

The Tenant testified that her tenancy and relationship with the Landlord was great until the basement renter, referred to in this Decision as KV, moved into the basement portion of the rental home on February 1, 2015. The Tenant testified that KV started to cause her problems because he was verbally abusive to his basement roommates and she could often hear him shouting profanities at them as well as talking about her.

The Tenant stated that the Landlord made KV her agent but explained that KV had only attended her rental unit once to look at a fridge repair without incident. The Tenant testified that the police had to be often called to deal with altercations involving KV and the basement roommates. The Tenant testified that on one occasion the basement unit was visited by a by-law enforcement officer; during this visit KV demanded to know who had made the complaint and suspected that it was the Tenant. The Tenant testified that

the by-law officer informed her later that the Tenant informed the bylaw officer that he had a key to the Tenant's rental unit and could enter at any time.

The Tenant stated that she was undergoing medical treatment for a serious illness which was being exacerbated by KV's behaviour and conduct. The Tenant explained that after she learnt that KV claimed he had a key to her rental unit she feared for her safety and the safety of her daughter. The Tenant stated that when they were home they would have to barricade themselves in and when they went out they feared he may be inside.

The Tenant explained that on April 28, 2016 she sent the Landlord an email which she provided into evidence in which she informed the Landlord that KV was fighting with his roommates and creating a disturbance. The Tenant explained that she later learnt that the Landlord had evicted KV's roommate and not KV. The Tenant confirmed that while KV continued to cause disturbances she did not notify the Landlord in writing apart from the April 28, 2015 email.

The Tenant testified that on August 8, 2015 she received a letter from the Landlord which falsely accused her of subletting the rental unit and using excessive utilities which she wanted the Tenant to reimburse. The Tenant testified that she was so shocked to receive this letter because her relationship with the Landlord was going well. The Tenant submitted that the Landlord had been told false accusations by KV which led to the letter being served to her.

The Tenant testified that she was served with two notices to end tenancy for cause and one for unpaid rent during the August and September 2016 period. The Tenant explained that the notice to end tenancy for cause was based on malicious and false allegations by the Landlord which all came from KV. The Tenant explained that she was very upset and disappointed that the Landlord had believed KV's false allegations and had proceeded to give her the notices to end tenancy.

The Tenant disputed the notices to end tenancy and a hearing was scheduled to hear evidence on them before a different Arbitrator on November 14, 2016. The Tenant explained that in the interim time period, she mutually agreed with the Landlord to move out of the rental unit on October 31, 2016 and therefore no findings were made on them. However, in that hearing, KV provided oral testimony with respect to allegations that the Tenant was growing a marijuana operation and a laundry business from the rental unit which was leading to excessive use of the utilities. The Arbitrator determined that these allegations were not supported and proved with respect to the Landlord's monetary claim.

The Tenant stated that she had provided several character witness statements verifying that she was a person of integrity and that the Landlord allowed KV to influence her with false allegations that led to the ending of the tenancy and deterioration of the Tenant and Landlord relationship. The Tenant testified that after she vacated the rental unit, KV was evicted by the Landlord for problems KV caused to the renter moving into her rental unit.

The Landlord disputed the Tenant's testimony. The Landlord denied that she provided KV with a key to the Tenant's rental unit. The Landlord acknowledged that the Tenant had informed her of a dispute between KV and his roommate in April 2015 but the Landlord stated that she took the appropriate action against KV's roommate based on her investigation of that dispute. The Landlord explained that she talked to KV about his conduct in the tenancy and KV denied it all.

The Landlord stated that that in the months after April 2015 she often visited the rental home where she saw the Tenant and not once did the Tenant tell her of the problems she was experiencing with KV. The Landlord stated that it was at this time she noticed that the Tenant was doing excessive laundry and had her daughters staying with her which was contrary and illegal to the agreement. It was for this reason, the Tenant was provided with the notice to end tenancy for cause and not because it was based solely on KV's allegations. The Landlord stated that the tenancy was ended by mutual agreement and not through the notice to end tenancy.

Analysis

I have carefully considered the evidence provided by the parties in this case and I make the following findings on the Tenant's monetary claim for harassment and loss of peaceful and quiet enjoyment as follows. A party that makes an Application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Policy Guideline 6 to the Act explains harassment as follows:

“Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions; however all reflect the element of ongoing or repeated activity by the harasser”.

[Reproduced as written]

Under section 28 of the Act a tenant is entitled to quiet enjoyment, including, but not limited to the rights to: reasonable privacy; freedom from unreasonable disturbance; exclusive possession, subject to the landlord’s right of entry under the Legislation; and use of common areas for reasonable and lawful purposes, free from significant interference.

Based on the foregoing, I find the Tenant has provided insufficient evidence that the Landlord engaged in a repeated and ongoing course of vexatious conduct or comment. In this case, the Tenant complains about the fear and anxiety that KV created for her in this tenancy. In this respect, the Tenant provided insufficient evidence that she attempted to remedy this issue with the Landlord. The only evidence the Tenant relies on is an email she sent in April 2016 which explained of a disturbance between KV and his roommate, this disturbance was not directed towards the Tenant.

The Tenant highlighted her fear and anxiety that KV had caused but there no evidence before me that the Tenant put the Landlord on notice of any disturbance or threats that were directed towards the Tenant or that she wanted this to be remedied. The Tenant also failed to address the issue through dispute resolution, an action which would have been warranted based on the Tenant’s oral evidence that she feared for her safety.

I find the Tenant failed to provide any direct evidence supporting her oral testimony that KV created disturbances during the tenancy that breached the Tenant’s privacy or that prevented the Tenant from possession of the rental unit.

The Tenant relies on hearsay evidence that KV had a key to her rental unit, but there is no evidence to show this was the case or that KV used a key to gain access to the

Tenant's rental unit. In this case, the Tenant could have mitigated her fear by firstly asking the Landlord if KV did indeed have a key to the rental unit and secondly, asking for the locks to be changed.

The Tenant claims for issues that occurred when she was given a breach letter on August 8, 2015 by the Landlord for reasons that the Tenant believes were false and that these allegations were being brought forward to the Landlord by KV. However, the Landlord testified that she had witnessed breaches by the Tenant herself and was not relying solely on the evidence of KV.

I find the issuing of a notice to end tenancy for cause does not constitute harassment by the Landlord. I find the Landlord had a right under the Act to serve the Tenant with the notice to end tenancy believing that she had cause to end the tenancy. In addition, I find that the Tenant had protection and relief under the Act to dispute the Notice to show that the allegations and reasons for ending the tenancy were false. While the Tenant did apply to dispute the notices to end tenancy, the Tenant did not follow through to have the notices cancelled but instead chose to mutually agree to end the tenancy with the Landlord. To me, this is not sufficient evidence of harassment or loss of enjoyment of the tenancy as both parties had exercised rights available to them under the Act.

I find that it is not sufficient to claim harassment because a landlord issued a notice to end tenancy for cause based on bad faith allegations provided to the Landlord by a third party. In this case, the Tenant had relief to dispute the allegations and they continue to remain allegations as they have not been proven. Furthermore, there is insufficient evidence before me to show that the allegations made by KV led to the ending of the tenancy as the parties agreed to mutually end the tenancy. Based on the foregoing, I find that I am unable to award any compensation to the Tenant for harassment and loss of enjoyment based on the lack of evidence before me.

With respect to the Tenant's undisputed monetary claim for utilities, I grant the Tenant the amount of \$238.50. As the Tenant had to file the Application to obtain this relief, I also award her the filing fee of \$50.00 pursuant Section 72(1) of the Act. Therefore, the Tenant is granted \$288.50 in monetary compensation.

The Tenant is issued with a Monetary Order for this amount which is enforceable in the Small Claims Division of the Provincial Court if the Landlord fails to make payment. Copies of the Monetary Order are attached to the Tenant's copy of this Decision.

Conclusion

The Tenant's claim for utilities and the filing fee in the amount of \$288.50 is granted. The Tenant has failed to meet the burden to prove the remainder of her monetary claim which is hereby dismissed without leave to re-apply. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 17, 2016

Residential Tenancy Branch