



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC OLC RP FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant November 7, 2016. The Tenant filed seeking an order to cancel a 1 Month Notice to end tenancy for cause; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the *Act*), regulation or tenancy agreement; to order the Landlord to comply with the *Act* and make repairs to the unit, site, or property; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord, the Tenant, and the Tenant's two witnesses. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Although all relevant submissions have been considered, not all are listed in this Decision.

Issue(s) to be Decided

1. Has the Tenant vacated the rental unit?
2. If so, are the Tenant's requests to cancel the Notice and to obtain Orders to have the Landlord comply with the *Act* and make repairs now moot?
3. Is the Tenant entitled to monetary compensation for loss of quiet enjoyment?

Background and Evidence

The Tenant entered into a written month to month tenancy agreement which commenced on July 1, 2015. Rent of \$875.00 was payable on the first of each month and on July 1, 2015 the Tenant paid \$437.50 as the security deposit.

The tenancy agreement included a one page addendum listing 22 items, as indicated at section 17c) of the tenancy agreement. The tenancy agreement listed one tenant who was the applicant of this dispute. The addendum included, in part, as follows:

8 Tenant agrees that occupancy is limited to the person(s) listed In this tenant agreement

[Reproduced as written]

The rental unit was described as being a self-contained basement suite in the lower level of the house. The Landlord occupied the upper level of the house.

The Tenant was served a 1 Month Notice to end tenancy for cause on October 31, 2016. The Tenant vacated the rental unit on November 30, 2016, the effective date of that Notice.

The Tenant sought \$7,000.00 for defamation, harassment, and loss of quiet enjoyment. The Tenant testified that since March 2016 the Landlord had been bothering her saying she could smell a chemical smell or drug smell coming from the rental unit. The Tenant argued the Landlord was harassing her by threatening to call the police and fire department; yet none of those professionals ever attended the rental unit.

The Tenant submitted that in March 2016 her boyfriend began staying with her to provide care for her after she was involved in a motor vehicle accident. She initially stated he stayed with her regularly to provide her care, except for days when he would go to his home to purchase up groceries for his children. She later changed her testimony to state he would stay until late hours of the evening and then would go to his home.

The Tenant initially stated her boyfriend did not wash his clothes at her rental unit and then changed her submission to say she would wash his clothes with her laundry. She confirmed her boyfriend would shower at the rental unit.

The Landlord submitted that although she saw the Tenant's boyfriend at the rental unit casually in the fall of 2015, the Tenant's boyfriend's presence at the rental unit increased to fulltime after their motor vehicle accident in March 2016. She stated that it was September 2016 when she asked if the Tenant's boyfriend had moved into the unit because she had seen him there every day since March. She stated she attempted to accommodate the Tenant offering to renegotiate the tenancy agreement to add her boyfriend. The Tenant refused stated her boyfriend did not live with her. The Landlord reminded the Tenant that the tenancy agreement specifically stated it was for one person because the utilities were included in the rent. The Landlord argued it was not reasonable that she would have to pay higher costs for utilities to accommodate the Tenant's boyfriend.

The Landlord testified that she had no ill feelings towards the Tenant and she was not harassing the Tenant. Rather, she was simply investigating the chemical smell coming up through the vents from the lower suite. She asserted she had a duty to investigate the smells for health and safety purposes. She noted that those smells began after the Tenant's boyfriend moved into the unit in mid-March 2016.

The Landlord testified that she had contacted the RCMP and was told that she needed to deal with their issues through the tenancy branch. She stated the police told her they would not attend the unit unless things escalated

Witness 1 testified that he was witness to an event that occurred sometime in October or November where the Landlord walked into the rental unit after him. He stated the Landlord would not leave despite the Tenant asking her three or four times to leave.

The Landlord questioned Witness 1 after which the witness confirmed the event he was speaking about occurred November 26, 2016. He acknowledged that event was when he was

standing outside smoking and the rental unit door was open. The Landlord asserted she simply stood in the doorway of the open door when the Tenant began to yell at her to leave. The Landlord asked Witness 1 if she was being aggressive during that time. Witness 1 answered "no you were not aggressive".

Witness 2 testified she was at the rental unit near the end of November 2016 when she heard the Landlord at the door talking about a smell. She said the Landlord pushed her way into the rental unit and put her leg in the door to prevent her mom from closing the door. Witness 2 stated her mom asked the Landlord to leave and the Landlord ignored her requests.

Witness 2 indicated that Witness 1 was standing outside smoking during the aforementioned occurrence. When asked where she was standing during this occurrence Witness 2 stated she was in the living room, an area that could not be seen from the doorway. The Landlord asked Witness 2 if she remembered the Tenant yelling at Witness 1 to come back into the unit after which the Tenant slammed the door. Witness 2 confirmed that is what happened.

The Landlord asserted she was simply doing her job trying to maintain the rental unit for health and safety reasons. She stated she did so without harassing or being aggressive towards the Tenant.

The Tenant argued as follows: the Landlord's allegations were false; the Landlord blamed the Tenant for the smells; the Landlord chose to harass her; and the Tenant responded the best she could.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

The Tenant vacated the rental unit as of November 30, 2016. Therefore, the Tenant's requests to cancel the Notice to end tenancy and to obtain Orders to have the Landlord comply with the *Act* and make repairs are moot. During the hearing the parties were advised the *Act* does not provide for punitive damages. As such, I considered the Tenant's request for compensation for loss of quiet enjoyment.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, 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 in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

I considered both witness statements with minimal evidentiary weight as both of their statements were vague until clarified by the Landlord's questioning. Furthermore, both witnesses were in a personal relationship with the Tenant which may have clouded or swayed their initial submissions of what actually occurred on November 26, 2016.

After consideration of the totality of the evidence before me I find the Landlord was not in breach of the *Act*, regulation, or tenancy agreement. Notwithstanding the submissions regarding

November 26, 2016, when the Tenant asked the Landlord to leave three times, I favored the Landlord's submissions that she was not being aggressive. I further accept the Landlord's actions were not unreasonable as she had a duty to investigate the smells in order to maintain the residential property in a state of decoration and repair that complied with the health, safety and housing standards required by law, as required by section 32 of the *Act*. In addition, there was insufficient evidence to prove the Landlord's communications with the Tenant were harassing in nature or were an unreasonable disturbance.

From her own submissions the Tenant confirmed her boyfriend was showering and having his laundry cleaned at her rental unit. Notwithstanding the fact the boyfriend may have retained a rental unit elsewhere; I do not accept the Tenant's assertion that her boyfriend was not occupying the rental unit. Rather, there was sufficient evidence to prove the Tenant's boyfriend began occupying the rental sometime after mid-March 2016. It is not enough to simply state or prove the boyfriend was paying rent elsewhere; rather, the irrefutable evidence was the boyfriend was at the rental unit day and night using showering and having his laundry cleaned at the Tenant's rental unit. As such I find the evidence supports it was the Tenant who was in breach of the tenancy agreement and not the Landlord.

Overall, I find there was insufficient evidence to prove the Tenant's claim for loss of quiet enjoyment. Accordingly, the claim is dismissed in its entirety, without leave to reapply. The Tenant was not successful with her application; therefore, I declined to award recovery of her filing fee.

Conclusion

The Tenant was not successful and her application was dismissed, without leave to reapply.

This decision is final, legally binding, and 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: December 21, 2016

Residential Tenancy Branch