



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MNDC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a Two Month Notice to End Tenancy for landlord's use of the property; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

At the outset of the hearing the tenant advised that she intends to vacate the rental unit in accordance with the Two Month Notice and therefore withdraws her application to cancel the Notice. The landlord accepted the tenant's request that she may end the tenancy on January 09, 2017.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch in advance of this hearing. The landlord provided documentary evidence to the tenant in advance of this hearing. The tenant testified that she sent evidence to the landlord via normal mail. The landlord testified that he did not receive any documentary evidence from the tenant. In considering rule 3.14 of the Rules of Procedure, the tenant as the applicant, must submit their evidence so that it is received by the respondent not less than 14 days prior to the hearing. In considering whether to accept the tenant's evidence, I find there is insufficient evidence to show that the tenant served her

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#RTB-136 (2014/12)



evidence upon the landlord. I therefore declined to consider that documentary evidence. I did however consider the tenant's oral testimony.

Issue(s) to be Decided

- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy started on September 01, 2016. Rent for this unit is \$850.00 per month due on the 1st of each month. The tenant paid a security deposit of \$425.00 at the start of the tenancy. The parties have a second Dispute Resolution Hearing scheduled to be heard on January 18, 2017 concerning unpaid rent.

The tenant testified that the landlord has failed to comply with the *Act* by providing a rental unit that is warm and weather proof and properly insulated. The walls are covered in ice and the tenant has been using electric heaters to keep the unit warm. The tenant testified that the unit does have a gas furnace but she received a letter from Fortis gas saying the gas was not turned on. The tenant agreed she did not put the gas account into her name in order to get the gas turned on.

The tenant testified that the landlord has not protected the tenant's right to quiet enjoyment of her rental unit. Since the tenant moved in the landlord has been in contact with the tenant's ex-fiancé and gone for drinks with him. The tenant testified that her ex-fiancé is trying to get information about the tenant for a court case they have pending. The tenant testified that the landlord has taken pictures of the house without the tenant's permission. The landlord also posted a Notice of Entry to the unit on the door and wanted to entry the next day without allowing for three days for the Notice to be

deemed served. The tenant agreed the landlord or his representative did not enter the unit.

The tenant seeks to recover a Monetary Order from the landlord for cleaning the unit at the start of the tenancy. The tenant testified that the landlord did not provide the unit in a clean condition and the tenant spent money on cleaning supplies and had to clean the unit herself. The tenant testified that she seeks to recover \$83.07 for cleaning supplies and \$240.00 for 16 hours of cleaning at \$15.00 an hour.

The tenant testified that she had also made a monetary claim for some garden items but withdraws these sections of her claim as she realizes these are not the landlord's responsibility.

The tenant testified that as she has been using electric heaters to heat the unit and because the unit is not properly insulated the landlord should pay the tenant's electricity bill of \$411.86. A copy of the bill has been provided in documentary evidence.

The tenant seeks to recover rent for three months of the tenancy to an amount of \$2,550.00 because the tenant claims the rental unit does not meet health and safety standards.

The landlord disputed the tenant's claim for an Order for the landlord to comply with the *Act*. The landlord testified that he had lived in the house for years and the house is warm and insulated. Had the tenant turned on the furnace at the thermostat and set the temperature then the unit would not have been cold. The tenant was advised to set up a Fortis gas account and the landlord has no idea why the tenant would choose to use electric heaters which are expensive to run. The landlord testified that the walls and attic have insulation and the windows are double paned glass.

The landlord testified that the tenant's ex-fiancé has been a friend of the landlords for years and they hang out together. It was the tenant's ex-fiancé that informed the

landlord that the tenant living in the landlord's house was his ex-fiancée. The landlord testified that he has never entered the rental unit without proper notice and the time that the notice of entry was posted on the tenant's door, the tenant would not let the landlord's agent enter the unit. The landlord testified that he had his mother take some photographs of the outside of the house due to some damage caused by the tenant but his mother was able to do so without stepping onto the property. This evidence will be used at another hearing.

The landlord disputed the tenant's claim for cleaning. The landlord testified that the unit was clean at the start of the tenancy. The previous tenant had left the rental unit clean and received back his security deposit held in trust by the landlord because the unit was clean. The tenant has never mentioned to the landlord about any cleaning prior to this hearing and no complaints were ever made about the unit being dirty by the tenant.

The landlord disputed the tenant's claim to recover the cost for the electric bill. The landlord testified that the furnace is in working order and all the tenant had to do was turn it on. It was the tenant's choice not to put the Fortis gas in her own name and create an account for gas. If the tenant had used the furnace instead of electric heaters her bills would have been much cheaper.

The landlord disputed the tenant's claim to recover three months of rent. The landlord testified that there is nothing to suggest the house does not meet health and safety standards. Had the tenant turned the heat on via the furnace then the house would have been warm and there would not be any issues.

Analysis

The tenant withdrew her application to cancel the Two Month Notice to End Tenancy and testified that she will be vacating the rental unit on January 09, 2017. The landlord accepted that the tenant will vacate the rental unit on that date.

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows: With regard to the tenant's claim that the landlord has not complied with the *Act*, regulations or tenancy agreement; in this matter the tenant must show the reason the unit was so cold was because the house was not weather proofed or poorly insulated and must show that the landlord has not protected the tenants right to quiet enjoyment of her rental unit or protected her privacy.

When one person's word contradicts that of the other then the person making the claim has the burden of proof. In this case the burden of proof falls upon the tenant and the tenant should provide corroborating evidence to support her claim. In the absence of any corroborating evidence to show the unit is not adequately weather proofed or poorly insulated or that the landlord has not protected the tenant's right to quiet enjoyment and privacy or that the landlord entered the tenant's unit without proper notice I find the tenant has not met the burden of proof and therefore her claim for an Order for the landlord to comply with the *Act* is dismissed.

With regard to the tenant's claim for money owed or compensation for damage or loss; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenant's claim for compensation does not meet any of the components of the above test. The tenant has insufficient evidence to support her claim that the unit was dirty at the start of the tenancy. The tenant has insufficient evidence showing the actual amount of each item claimed and the tenant has insufficient evidence that she notified the landlord at the start of the tenancy that there was cleaning required so the landlord had the opportunity to deal with any issues. Consequently, I find the tenant's claim to recover the cost of cleaning supplies and for her time and labour for cleaning is dismissed.

With regard to the tenant's claim to recover the cost of the electric bill; the unit had a gas furnace and the tenant could have put the gas account into her own name as heating was not included in the rent. The tenant failed to turn on the gas supply and therefore was unable to use the furnace. I find therefore that any electric bills incurred by the tenant must be borne by the tenant as there is insufficient evidence to show the house was not properly insulated. This section of the tenant's claim is dismissed.

With regard to the tenant's claim to recover the rent for three months as the tenant testified the rental unit did not meet health and safety standards. Based on the evidence before me I find the tenant has insufficient evidence to show that the rental unit does not comply with health and safety standards required by law. Consequently, this section of the tenant's claim is dismissed.

Conclusion

For the reasons set out above, I dismiss the tenant's application in its entirety 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: January 04, 2017

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