



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened in response to applications by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The application from the tenant requested:

- a Monetary Order for damage or loss under the *Act* pursuant to section 67.

Landlord, N.B., his lawyer, D.O., and the tenant appeared at the hearing. Counsel for the landlords presented submissions on behalf of the landlords during the hearing and will herein be referred to as the “landlord.” The landlord confirmed receipt of the tenant’s application for Dispute Resolution and evidentiary package by way of Canada Post Registered Mail sent on February 6, 2017. Pursuant to sections 88 and 89 of the *Act* I find the landlords served with the tenant’s application and evidentiary package. The landlords did not submit written evidence.

At the outset of the hearing, the tenant explained that she wished to amend her application from \$2,600.00 to \$3,900.00. The landlord stated that he had no objection with this. Pursuant to section 64(3)(c) the tenant’s application is amended to reflect this change.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for damage or loss?

Background and Evidence

Testimony was provided to the hearing by both parties that this tenancy began on July 1, 2015 and ended on May 31, 2016. Rent was \$1,300.00 per month and a security deposit of \$650.00 continues to be held by the landlords.

The tenant testified that the parties have twice gone to arbitration before the *Residential Tenancy Branch*. The first occasion was on May 18, 2016, with the second being on February 6, 2017.

During the May 18, 2016 hearing it was determined by the arbitrator that the landlords issued a 2 Month Notice to End Tenancy ("2 Month Notice") on March 30, 2016 in good faith and that the tenancy ended on the basis of this 2 Month Notice on May 31, 2016. The tenant contended during our hearing of June 5, 2017 that the 2 Month Notice was in fact issued in bad faith and the reason the 2 Month Notice was upheld during the May 18, 2016 hearing was due to the fact that the landlord's mother-in-law was to occupy the rental unit.

The tenant has applied pursuant to section 51(1)(b) of the *Act* for a monetary award of \$2,600.00, equivalent to two month's rent. She explained in her written submissions, that she sought this amount, "because he failed to use the rental suite as per the eviction notice."

In addition to the tenant's application under section 51(1)(b) of the *Act*, the tenant has applied for a monetary award of \$1,300.00 for loss of quiet enjoyment pursuant to section 28 of the *Act*. The tenant explained that she is seeking this award because of the troubles she had with the landlord from January 2016 to May 2016. The tenant provided very detailed written submissions concerning her grievances with the tenancy and the manner in which she felt her quiet enjoyment had been compromised.

Counsel for the landlords explained that the 2 Month Notice issued to a tenant was issued because *the rental unit will be occupied by the landlord or the landlord's close family member*. Counsel for the landlords, along with landlord, N.B., provided oral submissions stating that the landlord's mother-in-law had suffered health issues which prevented her from travelling from Ontario to British Columbia as planned. As such, she did not occupy the rental unit. Despite this, the landlord used the rental unit to house his three year old child. It was submitted that the suite was never re-rented and that it is in fact occupied by a family member. Furthermore, it was noted that at the time of the May 18, 2016 hearing that the landlord's mother-in-law had not yet fallen ill, and the arbitrator determined that there was no bad faith in the issuance of the 2 Month Notice. During the May 18, 2016 hearing it was determined, that the mother-in-law had sold her home in Ontario, and that the landlords were "expect[ing] to be needing more than one bedroom as their child grows."

The landlord denies all aspects of the tenant's application for a monetary award for loss of quiet enjoyment. Oral testimony was presented by the landlord that the relationship

between the parties had become strained towards the end of the tenancy. The landlord submitted that it was for this reason that the tenant sought compensation and cited the tenant's own written submissions that explain, "Although some of these things may seem like temporary discomfort or inconvenience all of these things represent the continuous nature and attitude of landlords who chose not to consider our rights as tenants and for quiet enjoyment."

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove her entitlement to her claim for a monetary award.

The tenant contended that a violation of the *Act* occurred when the landlord failed to move his mother-in-law into the rental unit, as purported during the May 2016 arbitration.

Section 49 of the *Act* states, "A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

The issue of good faith was examined in the May 2016 hearing; however, I will briefly re-examine the issue. *Residential Tenancy Policy Guideline #2* addresses the issue of good faith when a landlord ends a tenancy for landlord's use of property. It says, "good faith...encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage."

While the landlords have not moved their mother-in-law into the rental unit as they testified they would, they are using the rental unit for a close family member as defined under section 49(1) of the *Act*. I understand the tenant's frustration, but there is no absence of good faith on the part of the landlords in using the suite as they intended. The landlords have not re-rented the rental unit, or have not moved someone into the unit who is not defined as a "close family member" under the *Act* and seemed in good faith to have intended to use the rental unit to house their mother-in-law. Testimony was

provided by the landlord that a medical issue prevented their mother-in-law from occupying the rental unit; however, the landlord did not rule out her occupation of the suite in the future.

I find that while the landlords did not use the rental suite to house the close family member identified during their May 2016 arbitration, they are using the rental unit to house a close family member as defined by section 49(1) of the *Act*, and thus are not in violation of the *Act*. The tenant's application for a monetary award related to the invalid issuance of a 2 Month Notice is dismissed.

The tenant has also applied for a monetary award of \$1,300.00 for loss of quiet enjoyment related to her time in the rental unit from January to May 2016. *Residential Policy Guideline #6* explores basis for a finding of breach of quiet enjoyment. It notes, "a breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these...temporary discomfort or inconvenience. Hence this does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment."

As part of her evidentiary package, the tenant provided very detailed written submissions concerning the manner in which she felt her right to quiet enjoyment had been violated. After having carefully considered these, I do not find that the tenant has suffered a loss of quiet enjoyment as defined by *Policy Guideline #6*. Many of the issues identified in the tenant's submissions are inconveniences that seem to be a result of the contrasting personalities of the parties. One particular issue related to hydro which was the subject of a past arbitration before the *Residential Tenancy Branch*. By the tenant's own written submissions it is noted that "some of these things may seem like temporary discomfort," and I agree with this statement. The tenant would like all of these incidents to be viewed as a whole and for them to be considered in this manner. A breach of quiet enjoyment means a *substantial interference caused by the landlord which the landlord has failed to take reasonable steps to correct*. The landlords deny all aspects of the tenant's written submissions and contend that this application is the result of a relationship between the parties that had soured.

I do not find that any of the issues identified in the tenant's written submissions qualify as substantial interference. The tenant may have had to endure an overbearing landlord, but the issues identified by the tenant in her written submissions consist of

temporary discomforts and inconveniences. They were not a result of an action by the landlord seeking to purposefully interfere with the tenant's ability to enjoy the rental unit. The tenant's application for a monetary award for loss of quiet enjoyment is dismissed.

Conclusion

The tenant's application for a monetary order 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: June 9, 2017

Residential Tenancy Branch