



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL MNDC FF

Introduction

Both parties attended the hearing and gave sworn testimony. They confirmed the Notice to End Tenancy dated February 27, 2017 to be effective April 30, 2017 was served by posting it on the door. The landlord acknowledged receipt of the tenant's Application for Dispute Resolution. I find the documents were sufficiently served pursuant to sections 71, 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49;
- b) To obtain compensation for ending the tenancy early and for her sickness and harassment; and
- c) To recover the filing fee for this application.

Issue(s) to be Decided:

The tenant has vacated and both parties agreed that it was no longer relevant to cancel the Notice to End Tenancy for landlord's use of the property. The remaining issue is whether the tenant has proved entitlement to compensation and if so, to how much?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced February 1, 2017 on a month to month tenancy, rent was \$750 a month and a security deposit of \$375 was paid.

The landlord served a Two Month Notice to End Tenancy for landlord's use of the property. He testified that his daughter wanted to live in it as she is moving back to the area. The tenant vacated on July 31, 2017 and received a free month's rent. Her security deposit has not been refunded yet. I advised the tenant to provide the landlord with her forwarding address in writing with a request to return her security deposit to that address. I advised both parties to consult section 38 of the Act regarding the security deposit. The landlord had filled out an Application for Dispute Resolution which was in the tenant's file. I advised him that an Application from him must be filed with the Residential Tenancy Branch and served on the tenant to be considered a legal Application for Dispute Resolution.

The tenant claims as follows:

1. \$1000- Moving fees because she did not expect to have to move so soon. She said the unit was advertised as a long term tenancy. No advertisement is in evidence.
2. \$1200- one month rent in the town because she did not expect to have to move and this is an expensive time to rent.
3. \$600- the security deposit required to rent in the town.
4. \$2500- for stress and harassment. She was admitted to the hospital.

The tenant described how she was stressed by the landlord not giving her notice when the orchard was being sprayed. She said the workers wore hazmat suits but the spray blew in her windows twice and she was very ill and admitted to hospital. She said she had no doctor's letter but her prescriptions were in evidence. In her evidence there is an email stating she was poisoned and has a claim with Health Canada. The landlord said she was admitted to a unit that had nothing to do with poisoning. In any case, he said all rules were followed regarding spraying and she was not harmed by the spraying.

The tenant also alleged harassment by the landlord's workers destroying her garden and moving rocks. A letter from the landlord's workers accuses the tenant of harassing them and throwing the rocks into the orchard rows which is hazardous to them and the machinery. The tenant said she had been rude to them a couple of times but that was because they were spraying with no notice.

Included with the evidence is a copy of the Notice to End Tenancy, many emails between the parties, a copy of a lease and photographs of bottles with prescriptions on them. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, this is no longer an Application to cancel a Notice to End Tenancy but a monetary claim from the tenant.

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.

The onus is on the tenant to prove on a balance of probabilities that the landlord through act or neglect violated the Act or tenancy agreement causing her to suffer damage or loss. I find insufficient evidence to support the tenant's claim for compensation for moving expenses, rent and security deposit in the city. I find insufficient evidence that she had a long term tenancy and the landlord violated the terms of her tenancy and caused her to move early. I find the weight of the evidence is that she had a month to month tenancy as is evidenced by the lease. I find the landlord had a legal right to end this tenancy under section 49 of the Act. I dismiss this portion of her claim.

In respect to her claim for compensation for stress and harassment, I find insufficient evidence to support this portion of her claim also. I find insufficient evidence that the landlord's actions or neglect caused her harassment, stress or poisoning. She claims poison from spraying made her ill but there is no doctor confirmation of this. I find copies of two prescriptions insufficient evidence to prove this. There is evidence of a breakdown in the relationship with the landlord but I find the emails in evidence indicate there was misunderstanding, some anger and she had some fault in this also. She

agreed in the hearing that she was rude to the landlord's workers twice. I dismiss this portion of her claim.

For all of the above reasons, I dismiss the application of the tenant in its entirety.

Conclusion:

I dismiss the Application of the Tenant in its entirety without leave to reapply. I find her not entitled to recover filing fees due to 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: August 08, 2017

Residential Tenancy Branch