



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MND, CNC, OPC,

Introduction

This hearing was convened to deal with cross-applications by the landlord and the tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant’s application is for an order cancelling a 1 Month Notice to End Tenancy for Cause dated May 24, 2017 (the “1 Month Notice”), return of the security and pet damage deposits, and a monetary order for breach of the Act, regulation, or tenancy agreement.

The landlord’s application indicates that the landlord seeks order of possession for end of employment and because the tenant has given written notice to end the tenancy. At the outset of the hearing the landlord clarified that he actually seeks an order of possession based on the 1 Month Notice, and not for the reasons indicated on his application. The landlord also seeks compensation for damage to the rental unit and for monetary loss arising from breach of the Act, regulation, or tenancy agreement. Lastly, he seeks authorization to retain the pet and security deposits and recover the application filing fee.

The tenant attended the hearing with an advocate. The owner of the corporate landlord also attended. Both parties had full opportunity to be heard, to present affirmed testimony, to make submissions and to present documentary evidence.

At the outset of the hearing I advised the parties that their applications involving the security deposit were premature as the tenant was still occupying the rental unit.

Service of the tenant’s application and notice of hearing was not at issue.

Preliminary issue: Landlord's application

Service of the landlord's application on the tenant was not established. The landlord testified that his application and notice of hearing, along with his evidence, had been mailed to the tenant by regular mail. The tenant testified that he had not received them.

Section 89 of the Act sets out the different methods of serving an application. Regular mail is not one of them. As the tenant was not served with the landlord's application, the landlord's application is dismissed with leave to reapply.

The landlord's documentary evidence was not before me at the time of the hearing. The landlord said that his office had sent evidence to the Residential Tenancy Branch ("RTB") "about a week ago." The landlord did not seek an adjournment although the evidence was not before me. On August 8, I received six pages of evidence from the landlord. The landlord's evidence had been received by the RTB on August 3, for an August 4 hearing. The Rules of Procedure require that a respondent serve the RTB and the applicant at least seven days before the hearing. Accordingly, the landlord's late filed evidence is excluded.

At the outset of the hearing, I noted that the landlord's 1 Month Notice under consideration was unsigned. It is therefore not valid under s. 52 of the Act. This means that, even if the landlord were able to establish cause to end the tenancy, I could not issue an order of possession in his favour pursuant to s. 55.

Accordingly, the only issue before me at the hearing was whether the tenant is entitled to compensation for breach of quiet enjoyment.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation?

Background and Evidence

This tenancy began February 1, 2017. A copy of the tenancy agreement was in evidence. Rent of \$695.00 is due on the last day of the month. This is a month to month tenancy. A security deposit of \$347.50 and a pet damage deposit of \$250.00 were paid at the beginning of the tenancy and remain with the landlord.

It was agreed that BK was the owner of the corporate landlord and that his son, MK, who is approximately the same age as the tenant, maintains and care-takes the rental units.

Although the question of whether there is cause to end the tenancy was not decided at the hearing, the parties gave some evidence on that issue, and some of the allegations around the parties' conduct is related to the tenant's claim for monetary compensation.

The 1 Month Notice indicates that the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has caused or is likely to: (a) cause damage to the landlord's property; (b) adversely affect the quiet enjoyment, safety, security, or physical well-being of another occupant; and (c) jeopardize a lawful right or interest of another occupant or the landlord. In the "details" section of the 1 Month Notice the landlord has written: "A number of incidents have included verbal abuse to other residents, threats, and various incidents. Last straw was when [tenant] damaged weed eater we were using by kicking it . . . and threatened my well- being."

The tenant testified that there was an "incident" with one of his neighbours, JC, in the second month of his tenancy and that after that "incident" MK began knocking on his door approximately three times a week for various reasons. The tenant said that MK did so in spite of a note on his door asking visitors not to knock so as not to wake his young daughter. The tenant said that he asked MK to phone rather than knock but that he would not agree.

A neighbour wrote a letter describing the "incident" that the tenant says changed the dynamic of the relationship between the tenant and MK. She alleges that the applicant tenant was assaulted by JC and/or her boyfriend, who are also friends of MK.

That letter also states: "Problems with caretaker cleaning yard, cutting the grass. Doesn't knock on . . . [tenant's] door before he starts. Moves all stuff without tenant's permission. No set up time to come and do his job. [Tenant is] a young single father trying to provide a safe home for his daughter."

Another neighbour wrote a letter in support of the tenant, stating that he "has had a lot of problems with [MK] knocking on his door instead of phoning him . . . [tenant] has been raising his daughter on his own and I have a lot of respect for that and [MK] should respect that too and not show up unannounced and giving him 24hr notice if doing yard work."

The tenant further stated that he had asked MK not to access his yard without his permission, and yet MK regularly enters the yard to do yard work without notice. This is in spite of an agreement that the tenant believes he had with MK that MK would call in advance because the tenant's daughter might be using the yard. The tenant also said that he has told the landlord that he would prefer to do this yard maintenance as he enjoys it.

The tenant also said that MK threw a garbage container of dog feces on his deck and is generally rude.

BK said in response that the rental property is for sale and MK uses the weed eater on the yard approximately once every two weeks to keep it looking good. He also said that MK is responsible for other properties in other municipalities and could not therefore be knocking on the tenant's door as many as three times a week.

He further said that MK used to call to advise the tenant that a realtor would be attending but the tenant did not like this and so MK started posting 24 hour notices. He said that MK attends with the realtor when necessary or because the tenant has been late with rent. He said all attendances at the rental units are documented in the office.

Lastly, BK conceded that there was some animosity between MK and the tenant, and that when he attempted to sort it out the tenant became abusive with him, so he "can see why MK has a problem with the tenant."

The tenant seeks \$1,500.00 in compensation for loss of quiet enjoyment based on MK's conduct as set out above.

Analysis

Section 28 of the Act provides that a "tenant is entitled to quiet enjoyment including, but not limited to:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

There are clearly ill feelings between the tenant and MK. The landlord alleges that the tenant has been verbally abusive and threatening towards the individual landlord and his son and other tenants. The tenant accuses the landlord's son of being intrusive and rude.

One of the neighbours says in her letter in support of the tenant that MK is an associate of JC and her boyfriend, who, the letter writer says, assaulted the tenant.

Although the landlord's right to enter the rental property yard is not as strictly controlled as his right to enter the rental unit, the tenant is entitled to use of the yard free from substantial interference. Additionally, although the tenancy agreement does not address who is responsible for yard maintenance, Residential Tenancy Agreement Policy Guideline #1 suggests that in this circumstance it is generally the tenant's responsibility.

On balance, I find it more likely than not that MK has ignored the tenant's reasonable requests around his daughter's naps and her ability to spend time in the yard without maintenance being performed in light of the animosity that exists between the parties.

However, the tenant has not explained how he arrived at \$1,500.00. This is a significant amount and represents more than two months' rent in a tenancy of less than six months. As this is the tenant's claim, the tenant must establish the basis for the loss claimed. Here, the tenant has not clearly demonstrated why the value of his tenancy has been diminished by \$1,500.00.

However, because I accept there has been some infraction of his right to quiet enjoyment, I award the tenant nominal damages of \$100.00.

Although the conduct of all of the parties was canvassed at the hearing, I make no findings on whether or not there is cause to end the tenancy based on the tenant's conduct.

Conclusion

The tenant application for compensation is allowed to the extent that he is granted a nominal amount (\$100.00). The tenant is authorized to withhold \$100.00 from his monthly rent on a one time basis in full satisfaction of this award.

The tenant's application with respect to the security and pet deposits is dismissed with leave to reapply.

The landlord's application is dismissed with leave to reapply because the landlord has not properly served the tenant. The landlord is reminded that he cannot reapply on the 1 Month Notice under consideration today and dated May 24, 2017 because it is unsigned and therefore invalid.

I have made no findings on the merits of the landlord's application to end this tenancy for cause.

This tenancy will continue until ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 09, 2017

Residential Tenancy Branch