



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, OLC

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Landlord's Use of the property, for compensation for loss or damage under the Act, regulations or tenancy agreement and for the Landlord to comply with the Act, regulations and tenancy agreement.

The Tenant said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by personal delivery on July 26, 2017. Based on the evidence of the Tenant and testimony of the Landlord, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

At the start of the conference call the Tenant said she moved out of the rental unit on August 31, 2017 so she is withdrawing her application to cancel the Notice to End Tenancy as the tenancy has ended but she is continuing with her monetary claim.

Issues(s) to be Decided

1. Is there loss or damage to the Tenant?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?
3. Has the Landlord complied with the Act, regulation and tenancy agreement?

Background and Evidence

This tenancy started on May 1, 2015 as a month to month tenancy. Rent is \$725.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$362.50 on April 16, 2015. No move in condition inspection report was completed but a move out condition inspection report was completed.

The Tenant said this tenancy started well and she believes she had a good relationship with the Landlord. The Tenant continued to say that there have been a number of maintenance issues that have not been fixed by the Landlord. The Tenant said the washing machine leaked, the toilet leaked and the kitchen sink had a leak all of which the Landlord did not repair in a timely manner. As a result of the moisture leaks the Tenant said mold started to appear in the rental unit. The Tenant said she told the Landlord about these issues and he did not repair them so the Tenant felt the unit was uncomfortable to live in.

The Tenant was asked if she made an application to the Residential Tenancy Branch for repairs. The Tenant said she did not as she thought the Landlord would make the repairs in time.

Further the Tenant said that the Landlord is a quadriplegic and his care givers come early in the morning and create a lot of noise which reduces her quiet enjoyment of her rental unit. In addition to the noise issue the Landlord's daughter has been harassing the Tenant and the Tenant's boyfriend about smoking marijuana around the rental property. The Tenant said the Landlord's daughter has yell at her and her boyfriend and the Landlord's son threatened to hit her boyfriend in the face if they did not stop smoking marijuana around the rental unit. The Tenant said she called the police about this situation and the police came and talked to all the parties but no charges were laid.

The Tenant continued to say that because of the repairs, the noise issues and the harassment from the Landlord's daughter and son she has spent approximately half her time away from the rental unit staying at alternative housing. As a result the Tenant is requesting compensation of \$300.00 a month for the full length of the tenancy of 25 month in the amount of \$7,500.00 for the time she felt she could not live in her rental unit.

The Landlord said the Tenant is not telling the truth as he is in the driveway most mornings and he see the Tenant come out of her rental unit most mornings. The Landlord said they say hello and talk and then the Tenant goes on her way. As well the Landlord said he had the filters changed, he had his brother repair the leak in the sink, the door in the rental unit was replaced, he put a new hot water tank in the unit and he has not seen any mold in the unit. In addition he reduced the Tenant's rent by \$75.00 to compensate her for cleaning up some water from a water leak. The Landlord said he has responded to the Tenant's requests as best he could but if the Tenant does not tell him there is a problem he can not fix it.

The Landlord continues to say that his daughter and son have not harassed the Tenant and her boyfriend and the police told the Tenant not to smoke marijuana in public areas. The Landlord said his daughter and son only told the Tenant not to smoke marijuana in the rental unit or on the Landlord's property. The Landlord said this is what started the problems.

The Tenant said the marijuana issue may have started the problem with the Landlord's son and daughter but the Landlord's daughter and son escalated the issue by harassing her and her boyfriend. The Tenant's boyfriend gave witness testimony that the Landlord's son threatened to hit him in the face and the Landlord's daughter stalked and harassed the Tenant.

The Tenant said she had to live at alternative house toward the end of the tenancy because she was afraid of the Landlord's daughter and she did not want to use the toilet as it leaked. The Tenant said the back of toilet leaked and she did not want to make it worse so she felt she could not use the toilet.

The Landlord said there is no problem with the toilet and he fixed the leak after he knew about it.

The Landlord said in closing that the Tenant lived in the unit most nights and her boyfriend stay over on occasions as well. The Landlord said the conflict was about the Tenant smoking marijuana in and around the rental unit. The Landlord submitted two letters from his care giver that corroborated the Landlord's testimony that the Tenant spent most nights in the rental unit. As well the Landlord's son and daughter submitted signed letters stating the conflict with the Tenant was primarily about smoking marijuana.

The Tenant said in closing that she has never smoked marijuana in the rental unit or on the Landlord's property. As well the living situation at the rental unit became so difficult that she was living part time at her boyfriend's residence. The Tenant's boyfriend submitted a letter confirming the Tenant was living part time at his residence and she was paying \$300.00 per month starting in June, 2015. In addition the Tenant's boyfriend's letter indicated that the Landlord's son and daughter were harassing the Tenant about smoking marijuana. The Tenant said she is requesting \$300.00 per month for 25 month in the amount of \$7,500.00 as compensation for having to seek out part time alternative housing because her rental unit need repairs and the Landlord and his family were harassing her.

Analysis

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Tenant has alleged that she spent \$300.00 per month to stay at her boyfriends residence as she was uncomfortable staying at her rental unit. The Tenant's boyfriend's letter supports this but the Tenant has not provided any corroborative evidence of spending \$300.00 a month for alternative housing. As such the Tenant has not proven that she has had an actual loss.

Secondly the Landlord indicated in his evidence and testimony that the Tenant lived in her unit most nights and this testimony was corroborated by letters from the Landlord's caregivers. The Landlord said he repaired issues as the Tenant told him about them and the caregiver letters support these statements. The Tenant has not met the burden of proving the rental unit was uninhabitable or that she was unable to stay in the rental unit because of the Landlord's actions.

Thirdly the Tenant has not verified her lost with any written documentation such as receipts for the \$300.00 per month or bank statements showing the \$300.00 payments per month to the Tenant's boyfriend.

Finally the Tenant has not show how she tried to mitigate the situation. The Tenant could have made an application to the Residential Tenancy Branch for repairs to the rental unit if she believed the Landlord was derelict in his duties.

Consequently I find the Tenant has not met the burden of proof required for a successful monetary claim. As well I find the Tenant has not proven the Landlord has not complied with the Act, regulation and tenancy agreement. I dismiss the Tenant's application without leave to reapply.

Conclusion

The Tenant application 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: October 04, 2017

Residential Tenancy Branch