



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

The tenant attended the hearing via conference call and provided affirmed testimony. The landlord's agent, T.M. attended the hearing via conference call on behalf of the named landlord. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence.

The landlord's agent stated that he was recently retained to act for the landlord due to a sudden medical issue. The landlord's agent stated that the landlord is an elderly man in hospital due to an infection and is currently unable to participate in the hearing. The landlord's agent was unable to file any evidence authorizing him to appear as the landlord's agent. The tenant argued as such that the landlord's agent should not be allowed to speak on behalf of the landlord. The landlord's agent also requested an adjournment because of the landlord's medical condition to allow for the filing of the landlord's authorization. The landlord's agent was unable to provide an update of when the landlord would be available.

Although the landlord has failed to provide any evidence regarding the authorization for an agent to appear on his behalf, I accept the submissions that the landlord was unable to participate in the conference call hearing due to a sudden medical issue. I note that the tenant's application is regarding a monetary claim and find that there is no prejudice

to allow an adjournment for the landlord to attend or provide proof of authorization to act on behalf of the landlord. The request for an adjournment is granted.

Both parties confirmed that the landlord has not filed any documentary evidence. Both parties have also confirmed that the tenant has relied upon the submission of the 6 pages of documentary evidence consisting of a 2 page typed "Dispute Details", copies of 2 handwritten letters dated August 8, 2017 and one page consisting of 3 handwritten receipts, each for \$600.00. As such, no further evidence is to be submitted by either party nor shall it be accepted.

On April 26, 2018 the hearing was reconvened with both parties present.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Neither party provided any details of the tenancy agreement.

In this case, the tenant seeks a monetary claim of \$300.00 which is equal to ½ of the monthly rent as compensation. The tenant stated that he vacated the rental unit as he feared for his safety after an incident in which the landlord was upset that the tenant had left the pilot light on the gas fireplace after being absent for a period of time. The tenant clarified that upon arriving home (August 7, 2017) after being away he was confronted by the landlord who acted aggressively by yelling about the tenant's neglect in not turning off a gas pilot light for the fireplace. The tenant feared for his safety and immediately gave notice to end tenancy on August 8, 2017 to end the tenancy on August 8, 2017.

The landlord's agent disputes the tenant's claims stating that the landlord was upset, but was in no way threatening or aggressive. The landlord's agent provided undisputed affirmed testimony that the landlord is in his 70's and requires a cane to walk. The landlord's agent argued that the tenant's application should be dismissed as the tenant failed to comply with section 45 of the Act by providing proper 1 month notice to end the tenancy.

The tenant's witness, L.G. (his girlfriend) provided affirmed testimony that upon returning on August 7, 2017 they were confronted by the landlord who "barged" into the rental premises without notice and was yelling and acting scary towards them because of a gas pilot light which was left on by the tenants during their absence. L.G. stated that she was crying as result and feared for her safety as she was unsure what the landlord might do.

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.

Section 45 of the *Act* states in part that a tenant may end a periodic tenancy by giving the landlord notice to end tenancy effective on a date that is no earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable.

In this case, the tenant seeks compensation of \$300.00 for return of $\frac{1}{2}$ of the monthly rent as he was forced to vacate the premises for his safety. The tenant clarified that the he was only in possession of the rental unit for 8 days before he vacated the rental unit and wished for the amount based upon no possession for atleast $\frac{1}{2}$ of the monthly rent.

Both parties confirmed in their direct testimony that the tenant provided notice to end the tenancy on August 8, 2017 for August 8, 2017. The tenant argued that he was in fear for his safety and had to end the tenancy.

I accept the evidence of both parties and find on a balance of probabilities that the tenant has failed to provide sufficient evidence to satisfy me that he was forced to vacate the rental premises due to safety concerns. Although the tenant provided a witness to corroborate that an altercation took place with the landlord in which the landlord was "yelling and acting scary". This claim was disputed by the landlord's agent who noted that the landlord is an approximately 70 year old man who walks with a cane.

I note that although the tenant stated that he feared for his immediate safety both he and his girlfriend did not contact the police immediately and the tenant gave notice to end the tenancy the next day. On this basis, I find that the tenant has failed to provide sufficient evidence that they were forced to vacate the premises. I note as well that the tenant failed to provide proper notice to end the tenancy as per section 45 of the Act.

Conclusion

The tenant's application for monetary compensation 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: April 26, 2018

Residential Tenancy Branch