



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL OLC MNDC FF

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 12, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a notice to end tenancy for landlord's use of property;
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement;
- an order granting monetary relief for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlords attended the hearing on their own behalves. All parties in attendance provided affirmed testimony.

The Tenant testified the Application package and an Amendment to an Application for Dispute Resolution were served on the Landlords by registered mail. The Landlords acknowledged receipt. In addition, the Landlords testified that documentary evidence upon which they intended to rely was served on the Tenant by registered mail. The Tenant acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find the parties were sufficiently served with the above documents for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the outset of the hearing, the parties agreed the tenancy ended by agreement on March 9, 2018. Accordingly, it has not been necessary for me to consider the Tenant's requests for the following:

- an order cancelling a notice to end tenancy for landlord's use of property; and
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement.

Issues to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
- Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties confirmed the tenancy began on June 10, 2017. The Tenancy ended by agreement on March 9, 2018. A copy of a signed Mutual Agreement to End a Tenancy, dated February 14, 2018, was submitted into evidence by the Landlords. The parties confirmed that rent in the amount of \$1,000.00 per month was due on the 10th day of each month. The Tenant paid a security deposit in the amount of \$500.00, which was returned to the Tenant at the end of the tenancy in accordance with the *Act*.

The Tenant's monetary claim was set out on a Monetary Order Worksheet, dated March 22, 2018. First, the Tenant claimed \$4,000.00 as a reimbursement of rent from December 2017 to March 2018. She alleged the following "difficulties" during the tenancy were a violation of her right to quiet enjoyment, privacy, and respect. The Tenant testified she was subjected to an "illegal eviction" when she was asked to move out of the rental unit via a text message on December 7, 2017. A copy of the Landlords' text message was submitted with the Tenant's documentary evidence. Also submitted into evidence by the Tenant was her text message in response, dated December 8, 2017. In it, she agreed to "look for another place." However, the Tenant maintained she was not given a notice to end tenancy in the proper form and that dealing with the Landlords was "very stressful".

The Tenant testified further that the Landlords repeatedly entered her rental unit without notice during the tenancy. She stated the Landlords would access the rental unit through an interior door. In one example, the Tenant advised the Landlords entered the rental unit while she was on the phone in her bedroom.

In addition, the Tenant testified she received numerous harassing and intimidating text messages from the Landlords during the tenancy. According to the Tenant, the notice asking her to vacate the rental unit, repeated entries without notice and numerous text messages from the Landlord resulted in stress and eventually lead to a need for medical treatment. The Tenant submitted a copy of a redacted letter from her doctor, dated March 28, 2018, which confirmed the Tenant was experiencing several undiagnosed medical issues at that time.

The Landlords denied the Tenant's assertion they violated her right to quiet enjoyment, privacy, and respect. They acknowledged the Tenant was first asked to vacate the rental unit by text message on December 7, 2017. They were concerned about the condition of the rental unit. However, the Landlords noted the parties subsequently agreed the Tenant could stay in the rental unit if the condition improved. They acknowledged that a formal notice to end the tenancy was not issued. Nevertheless, as noted above, the parties mutually agreed to end the tenancy effective March 9, 2018.

The Landlords denied they entered the Tenant's rental unit repeatedly or violated the Tenant's privacy. According to the Landlords, the parties had established a pattern of communicating in person at the rental unit and via text message. However, the Landlords conceded they entered the rental unit without notice for emergency reasons twice during the tenancy. On one occasion, the Landlords entered the rental unit due to an issue with the heating system. They entered the property on another occasion out of concern for the Tenant's well-being when she failed to respond to the Landlords. The Landlords also asserted that the Tenant permitted them to enter the rental units on other occasions, and that the Tenant never expressed concerns about her privacy being violated during the tenancy.

Second, the Tenant claimed \$1,000.00 as compensation for having received an "illegal" notice to end the tenancy. As noted above, the parties agreed the Landlords did not issue a notice to end tenancy in the correct form, but asked the Tenant to vacate the rental unit by text message. As noted above, ongoing discussions resulted in the parties reaching a mutual agreement to end the tenancy effective March 9, 2018.

Third, the Tenant claimed \$120.00 for moving expenses; specifically, the Tenant claimed \$70.00 for the use of a truck and \$50.00 for gas. She testified to her belief that she was forced out of the rental unit. The Landlords denied liability for the Tenant's moving costs as the tenancy ended by mutual agreement.

Fourth, the Tenant claimed \$63.67 for prescriptions. The Tenant claimed these expenses were incurred because of stress caused by the Landlords' actions. In support, the Tenant submitted prescription receipts and an email from A.L., dated March 20, 2018. In it, A.L. described "frequent stomach pains for several weeks", which were attributed to an ulcer. The Landlords denied liability for the Tenant's health issues.

Fifth, the Tenant claimed \$105.67 for registered mail and photocopying expenses incurred to prepare for the hearing.

Finally, the Tenant sought to recover the \$100.00 filing fee paid to make the Application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. 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 what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlords. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenant's claim for \$4,000.00 as reimbursement of rent for an alleged loss of quiet enjoyment, privacy and respect, I find there is insufficient evidence before me to conclude the Landlords violated the *Act*, regulations, and/or the tenancy agreement, or that the Tenant incurred any loss. While I accept that the Landlords wished to end the tenancy but did not issue a notice in the proper form, I find the parties eventually entered into a mutual agreement to end the tenancy, effective March 9, 2018. In addition, I find there is insufficient evidence that the Landlords repeatedly entered the Tenant's rental unit without notice. Rather, I prefer the specific evidence of the Landlords which described two entries without notice for emergency reasons, and other entries with the Tenant's consent. Further, I find there is insufficient evidence that the Landlords harassed or intimidated the Tenant with text messages, or that the Landlords' actions caused the Tenant's health concerns. This aspect of the Application is dismissed.

With respect to the Tenant's claim for \$1,000.00 as compensation for having received an "illegal" notice to end the tenancy, I find the Landlords did not issue a valid notice to end the tenancy but expressed their desire to end the tenancy via a text message dated December 7, 2017. The parties subsequently had discussions that resulted in a mutual agreement to end the tenancy effective March 9, 2018. Accordingly, I find the Tenant is not entitled to compensation pursuant to section 51 of the *Act*. This aspect of the Application is dismissed.

With respect to the Tenant's claim for \$120.00 for moving expenses, I find there is insufficient evidence to conclude the Tenant is entitled to recover moving expenses from the Landlord. As confirmed by the parties, the tenancy ended on March 9, 2018, by mutual agreement. Landlords are generally not liable to pay a tenant's moving expenses, particularly when the tenancy ends by agreement. This aspect of the Application is dismissed.

With respect to the Tenant's claim for \$63.67 for prescriptions, I find there is insufficient evidence before me that the Tenant's health concerns were caused by the Landlords. This aspect of the Application is dismissed.

With respect to the Tenant's claim for \$105.67 for registered mail and photocopying expenses, I find these are expenses frequently incurred by a party making an application for dispute resolution and are not generally compensable. This aspect of the Application is dismissed.

As the Tenant has not been successful with any aspect of her claim, the Tenant is not entitled to recover the filing fee paid to make the Application.

Conclusion

The Tenant's 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: April 20, 2018

Residential Tenancy Branch