



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MT, CNL, MNDCT, LRE, RR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlord applied for an Order of Possession pursuant to section 55.

The tenants applied for:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") pursuant to section 66;
- cancellation of the 2 Month Notice pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The landlord did not attend this hearing which lasted approximately 10 minutes. The tenant appeared and was given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses.

The tenant testified that she served the landlord with the tenant's application for dispute resolution dated May 14, 2018 and evidence personally on or about that date when the landlord attended at the rental unit. The tenant said that the service was done in the presence of the other named tenant as witness. Based on the undisputed evidence I find that the landlord was served with the tenant's application and evidence in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the tenant testified that they have vacated the rental unit and withdrew the portions of their application pertaining to a continuing tenancy. The tenant said the sole outstanding issue is a monetary claim.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Are the tenants entitled to a monetary award as claimed?

Background and Evidence

The tenant testified that this tenancy began in November, 2017 and they moved out on June 30, 2018. The monthly rent was \$2,000.00. A security deposit of \$1,000.00 and pet damage deposit of \$1,000.00 were paid at the start of the tenancy and are still held by the landlord. The tenant testified that they have not provided the landlord with a forwarding address.

The tenant submits that the landlord required access to the rental unit too frequently in order to perform renovations and upkeep. The tenant testified that the landlord promised to fix the stairs to the rental unit at the start of the tenancy but failed to do so throughout the duration of the tenancy. The tenant claims a monetary award of \$4,200.00 for their losses. The tenant submitted into evidence some email correspondence with the landlord.

Analysis

The landlord did not attend the hearing which was scheduled by conference call at 9:30 am. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the landlord's application without leave to reapply.

While the tenant did not articulate it clearly, I find that the basis for the tenant's pursuit of a monetary award is a claim that there has been a breach of quiet enjoyment.

Section 28 of the Act gives rise to the right to quiet enjoyment and provides in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

I find that there is insufficient evidence in support of the tenant's claim for a monetary award on the basis of loss of quiet enjoyment. The email correspondence with the landlord spans a period of a few weeks, where the landlord provides notice when they require access to the rental unit. I find that the email correspondence and testimony to be insufficient to find that there has been a substantial interference of the tenant's enjoyment of the premises.

I find that there is insufficient evidence in support of the tenant's claim for a monetary award based on services or facilities not provided. The tenant has not provided documentary evidence in support of their claim that there were repairs required, reported and not performed. Consequently, I dismiss the tenant's claim for a monetary award.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

The portion of the tenants' application disputing the 2 Month Notice and seeking relief pertaining to an ongoing tenancy is withdrawn.

The balance of the tenants' 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: July 10, 2018

Residential Tenancy Branch