Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, RP, PSF, AAT, FFT

Introduction

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Preliminary Matters

Landlord HK (the landlord) confirmed that both landlords received copies of the tenant's dispute resolution hearing package and written evidence package left at the landlord's office on or about July 4, 2018. As such, I find that the landlord was duly served with these packages in accordance with sections 88 and 89 of the *Act.*

The landlord testified that they posted a copy of the landlords' written evidence on the tenant's door on July 13, 2018. The tenant denied ever having received this evidence

from the landlords. The landlord said that they had a photograph of the posting of this evidence on the tenant's door that day and that another person witnessed this posting. The landlord did not produce this witness or a statement from that witness, nor did the landlord submit a copy of the photograph of the posting of this evidence on the tenant's door. Later during the hearing, the landlord varied his testimony in this regard when they asked the tenant whether the tenant had received a copy of the landlord's written evidence package slipped under the tenant's door. When questioned about this statement, the landlord returned to the previous claim that the package was posted on the tenant's door. As I am not fully satisfied that the landlord has provided evidence to demonstrate that their written evidence was served to the tenant in accordance with section 88 of the *Act*, I have not considered the landlord's written evidence.

As the tenant denied having received this written evidence, I asked the landlord to read into the record sworn testimony regarding any of the documents the landlord included in the written evidence package. The landlord referenced some of these documents during their sworn testimony and I have given the landlord's undisputed sworn testimony regarding these documents consideration in reaching my decision.

At the hearing, the tenant requested permission to play a 53 second video that the tenant had provided to the landlord, but had not provided to the Residential Tenancy Branch (the RTB). The landlord objected to this evidence being heard and considered because the video was filmed after the tenant had submitted their application for dispute resolution. I advised the parties that I would listen to the video during the teleconference hearing, but would give it the weight it deserved after listening to it, since both parties had copies of the video before this hearing. Neither the landlord nor I were able to hear the video the tenant was referring to when the tenant attempted to play it at the teleconference hearing. The tenant did describe what the other tenant in this dispute (Tenant B) was calling her in the video, which the tenant described as typical of the verbal abuse the tenant has received from Tenant B for a long time.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Should the landlords be required to undertake repairs to this rental property? Should any other orders be issued against the landlords? Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This tenancy in a rental building began on August 1, 2015 and was initially set to run until July 31, 2016. At the expiration of the first term, the tenancy converted to a month-to-month tenancy. Current monthly rent is set at $1,020.00, payable in advance by the first of each month. There is a $420.00 security deposit that was paid at the beginning of this tenancy.

Although the tenant's application sought a monetary award of $1,500.00, plus the recovery of their filing fee, the tenant did not attach any Monetary Order Worksheet to their application. At the hearing, the tenant described her monetary request as compensation for the failure of the landlord to act promptly regarding her complaint that Tenant B had an off leash dog in the rental building and parking garage and that the tenant's access to the rental unit was severely restricted and "prevented "by Tenant B for a two month period commencing on April 19, 2018. The tenant maintained that they should not have been required to pay monthly rent for two months while the landlord did nothing to enforce the building's rules and city bylaws regarding off leash dogs. The tenant did not claim that they were unable to access the rental unit during this period.

The tenant provided photographic and written evidence, most of which involved their claim that the landlord was taking insufficient action to address their concern that Tenant B was letting their large dog roam within the building and the parking garage without a leash. From the tenant's evidence and evidence provided by the landlord, these two tenants have had ongoing disputes regarding off leash dogs for some time. The landlord testified that the tenant was warned about allowing the tenant's dog to roam off leash within the building at one point in this tenancy. The tenant no longer has this dog in the rental unit. The tenant maintained that the landlord has taken inadequate measures to ensure that Tenant B is following the building rules regarding off leash dogs. The tenant claimed that the landlord should have issued a Notice to End Tenancy to the other tenant due to the other tenant's repeated violations of the off leash dog requirements.

The tenant testified that the landlord has been trying to evict Tenant B, whom the tenant described as an aggressive and abusive alcoholic, from the building for two years. The tenant said that the landlord approached tenants in the building requesting written statements to support the landlord's efforts to evict Tenant B about two years ago. The tenant provided written evidence and sworn testimony that the landlord had not properly informed tenants in this building that the landlord would be sharing copies of the letters the landlord had asked them to write with Tenant B. That attempt had proven unsuccessful in leading to an end to the tenancy of Tenant B. Since that time, the

tenant maintained that Tenant B has been particularly abusive to those who were involved in the previous attempt to evict Tenant B.

The tenant claimed that the landlord should not have required the tenant to provide complaints in writing about Tenant B and that tenant's off-leash dog. The tenant maintained that the landlord should have acted promptly on the basis of the tenant's April 19, 2018 complaint that Tenant B had yelled at the tenant, and physically abused the tenant when the tenant raised concerns about Tenant B's off-leash dog. The tenant said that had the landlord acted properly in response to the April 19 incident a subsequent incident where the tenant was physically assaulted by Tenant B would not have happened. The tenant maintained that the landlord was responsible for the delay in acting on these matters and that the landlord had yelled at the tenant and told the tenant that the landlord would not be doing anything about Tenant B until the tenant provided letters of complaint about Tenant B. Given the tenant's past history with the previous attempt to evict Tenant B, the tenant did not believe that they should be required to provide signed written letters of complaint, which would be shared with Tenant B.

The landlord confirmed at least some of the sequence of events and emphasized that the tenant had not provided requested letters of complaint and photographs sought by the landlord. The landlord referred to repeated written requests to the tenant to provide written and photographic evidence to assist the landlord in dealing with these matters.

The landlord testified that despite the tenant's unwillingness to provide the landlord with written evidence which the landlord could use in any attempt to enforce the off-leash dog rules with Tenant B, the landlord has made use of the photographic and written evidence from the tenant to send warning letters to Tenant B on May 18, 2018, June 5, 2018 and June 12, 2018. The landlord also gave undisputed sworn testimony that the landlord's interaction with Tenant B has now advanced to the stage whereby eviction proceedings have been initiated against Tenant B.

The landlord also maintained that an incident in the parking garage between the tenant and Tenant B, one that was reviewed by the police, could be interpreted different ways. The landlord said that the video footage of this incident appears to show that the tenant attempted to drive their vehicle into Tenant B. The landlord maintained that there has been a long history of disputes between the tenant and Tenant B, disputes which appear to have escalated in the past few months.

The landlord gave undisputed sworn testimony that the landlord sent both tenants a letter asking them to vacate this building. If the tenants had agreed to this proposal, the landlord was willing to let both of them stay in the rental building for the final two months of their tenancies rent-free. The landlord said that neither tenant accepted this proposal.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

In this case, there is undisputed sworn testimony before me that the landlord has relied on the information provided by the tenant to enforce the building rules and city bylaws that prevent off-leash dogs from being allowed in the common areas of a rental building. Although the tenant would have preferred that this action were taken much more quickly, the parties agreed that even with written and signed statements from tenants in the past the landlord was unable to obtain an eviction of Tenant B. Under these circumstances and as both tenants appear to blame the other for their ongoing disputes and incidents, it is fully reasonable that the landlord would want to exercise care and caution to ensure that the landlord had sufficient written, photographic and video confirmation before issuing a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice), the desired outcome that the tenant seems to have been seeking. As there is undisputed sworn testimony that the landlord has taken action to issue a Notice to End Tenancy to Tenant B, it would appear that the primary outcome that the tenant has been seeking has occurred prior to this hearing.

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. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord contravened the *Act*, the *Regulations* or their tenancy agreement to the extent that some form of monetary award is warranted.

Based on a balance of probabilities, I find that the tenant has not provided sufficient evidence to demonstrate they are entitled to any form of monetary award for the delays experienced in obtaining action by the landlord to enforce the off-leash dog rules in this building. While the tenant interpreted the landlord's lack of action as being careless and negligent, I find that the landlord was taking due care to ensure that the landlord had obtained sufficient written, photographic and video evidence that would support the issuance of warning letters leading to an eventual Notice to End Tenancy. Based on the tenant's experience with the landlord's previous attempt to end Tenant B's tenancy for cause, I can understand the tenant's reluctance to have any new letters used by the landlord and shared with Tenant B during the hearing process. As explained at the hearing, anonymous letters of complaint are given little weight in a dispute resolution hearing before the RTB; only those letters that are signed or where the location of the tenant is known would be given significant weight during proceedings to evict a tenant. This process affords the party who has received a Notice to End Tenancy an opportunity to properly respond to the case against them, a fundamental precept of the rules of natural justice.

I find no sound basis for the tenant's claim that the difficulties the tenant was having in accessing the rental unit entitles the tenant to any form of rent reduction for the two months following her notification of the landlord of the problems the tenant was having with Tenant B and Tenant B's off-leash dog. There were clearly other means of accessing the rental building such that contact with Tenant B could be significantly reduced if not eliminated altogether. While I agree that this may have been an inconvenience to the tenant, this on its own does not entitle a tenant to a monetary award against the landlord.

Much of this dispute revolves around a series of interactions between Tenant B and the tenant, which have been reported to the police. Although the tenant attached significance to the advice they received from at least one of the attending police officers that the tenant should take up this issue with the RTB, this by no means entitles the tenant to a monetary award against the landlord because the police were unable to provide the tenant with the outcome the tenant was seeking in lodging complaints with the police. If an assault occurred, that is clearly a criminal matter; there may also be other issues in dispute between the tenant and Tenant B where the proper recourse would be to seek the initiation of proceedings through the court system.

My delegation is limited to those measures that are outlined in the *Act;* no recourse is available under the *Act* for actions between tenants in a rental building. A tenant's sole recourse under the *Act* is against the tenant's landlord. In this case, and for the reasons

cited above, I find no basis for issuing a monetary award against the landlord in this matter. I find that the landlord has been proactive in using information supplied by the tenant for the purposes of this dispute resolution hearing to support the landlord's attempts to take the very action that the tenant has been seeking with respect to Tenant B. I dismiss the tenant's application for a monetary award without leave to reapply.

I also dismiss the remainder of the tenant's application without leave to reapply as I find that the tenant has not submitted sufficient evidence or testimony to warrant the issuance of any other order against the landlord. As the tenant's application has been unsuccessful, I make no order with respect to the recovery of the tenant's filing fee.

Conclusion

I dismiss the tenant's application 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 23, 2018

Residential Tenancy Branch