



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, MNDCT, FFT

Introduction

On August 14, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an Order for the Landlord to comply with the Act, to restrict the Landlord from entering, a Monetary Order for compensation, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The above parties attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant testified that she moved out of the rental unit on September 28, 2018, and therefore, did not require an Order for the Landlord to comply with the Act or to restrict the Landlord from entering the rental unit. In accordance with Section 64(3) of the Act, I have amended the Tenant’s Application by removing the above claims and only proceeding with the monetary claim.

Issues to be Decided

Should the Tenant receive a Monetary Order for damages, pursuant to Section 67 of the Act?
Should the Tenant be compensated for the filing fee?

Background and Evidence

The Landlords and the Tenant agreed on the following terms of the tenancy:

The six-month, fixed term tenancy began on April 1, 2018 with the monthly rent of \$900.00. The Landlord collected and are still holding a security deposit of \$450.00. The Landlords were in the process of selling their house when the tenancy began, and the Tenant was aware that there would be showings during her tenancy. The Tenant moved out of the rental unit on September 28, 2018.

Tenant's Evidence:

The Tenant testified that from the beginning of the tenancy, she felt uncomfortable with Landlord TG. She stated that he asked her personal questions and always seemed to be hanging around the rental unit. The Tenant said that the Landlord was doing a renovation on the rental unit next door, which meant that he was always close by and in the shared yard. She felt that he was taking a long time to complete it and on April 23, 2018, confronted him and asked when he was going to be done.

The Tenant stated that after she told the Landlords that she needed some space from them, they approached her and asked if she wanted to move out of the rental unit. The Tenant testified that the Landlords started stalking her and whenever she was away from her home, felt that they would enter. She said that the Landlords had many different cars and would often drive by and would post notices on her door when she wasn't home. When the Tenant went to the police about the Landlords' behaviour, they wouldn't do anything.

The Tenant stated that she began to walk to work so that she could leave her truck at home, to make the Landlords think that she was there. When she would arrive back to her rental unit, she would have a "creepy feeling" that someone had been in her house.

The Tenant felt that the Landlords weren't being fair and when they told her to remove the tinfoil from her window or mow the lawn, they didn't ask the other tenant next door to do the same.

She stated the Landlords illegally entered her house sometime around April 23-26 and removed a paint tray that the Landlord had been previously using, from her kitchen. As a result of not trusting the Landlords, she would barricade her door when she was at home because she was worried about her safety. The Tenant said that the Landlords were not giving proper written notice for the showings of the rental unit and were harassing her.

The Tenant stated that the Landlords ruined her summer and she is claiming the amount of rent that she paid during her six months tenancy, for a total of \$5,400.00, for loss of quiet enjoyment.

Landlords' Evidence:

The Landlords stated that when they set up a tenancy with someone, they do ask some personal questions to establish who will be living in the rental unit and who will be on the lease. The Landlords testified that the Tenant knew the rental unit was listed for sale when she moved in and had originally agreed to receive notices of showings via email. The Tenant later requested that the notices be in writing and the Landlords complied.

The Landlords provided an email sent on April 19, 2018, to advise the Tenant that there would be a showing on April 21, 2018. The Landlord stated that the house was showed on April 21, 2018, in company a realtor, and that was when the Landlord picked up the paint tray.

The Landlords stated that it has been very difficult to conduct their business of selling the rental unit as the Tenant would not answer her door when she was home and demanded written notice, therefore, the showings would be delayed by having to post the notices of entry on her door, versus personal service.

When the Landlords learned of the Tenant's unhappiness with the tenancy, they did approach her and invited her to end her tenancy if she wished and that they would only request one month's notice, without holding her to the lease agreement dates.

The Landlords stated that they do not drive by the rental unit, that they have never been in the rental unit without the Tenant, that they stay away from the Tenant as much as possible and whenever they have to attend the rental unit, they always have a witness.

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the Tenant's testimony that she felt disturbed at the presence of the Landlords during the renovation of the neighbouring rental unit. Furthermore, that the regular notices to enter from the Landlords to show the rental unit would also be bothersome. I also accept the undisputed testimony of the Landlords' that the Tenant was aware, from the beginning of her tenancy, that the rental unit was for sale and that there would likely be regular showings.

When I consider the testimony and evidence from both parties, I find that the Tenant failed to provide sufficient evidence to prove that the Landlords' behavior was harassing in nature or that the Tenant suffered a loss as a result of the Landlords' violation of the Tenancy Agreement or the Act. As a result, I dismiss the Tenant's Application without leave to reapply.

As the Tenant's Application was unsuccessful, the Tenant should not be compensated for the filing fee.

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: October 02, 2018

Residential Tenancy Branch