



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL CNC OPT MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on September 10, 2018. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both the Landlord and the Tenant attended the hearing and provided testimony. The Landlord brought with him his counsel and the Tenant brought an advocate. Both sides confirmed receipt of each other's documentary evidence. The Landlord confirmed receipt of the Tenant's application and amendment.

Both parties were provided the 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant applied for an order of possession, and to cancel two different Notice's to End Tenancy. However, the Tenant no longer lives in the unit, and does not wish to obtain an order of possession. Further, of the monetary items the Tenant identified on his application and amendment, the only one he was ready to proceed with was an application for monetary compensation for "loss of quiet enjoyment." I have amended the Tenant's application accordingly. The Tenant is granted leave to reapply for any remaining monetary items.

The Landlord tried to file an amendment to the Tenant's application where he wanted to file a monetary claim against the Tenant. However, as discussed in the hearing, the

Landlord must file his own application for compensation, and is not permitted to claim for monetary compensation by amending the other party's application. The Landlord is granted leave to apply for any monetary compensation.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that the tenant has been living at the rental unit for around 4 years now. Rent is set at \$550.00 per month, and is due on the first of the month.

The Tenant stated that he has received multiple Notices to End Tenancy from the Landlord over the years. The Tenant stated that he has received 3 2-month Notice's for Landlord's Use of the Property, and at least one 1-Month Notice for Cause. The Tenant stated that in this application he is seeking \$1,100.00 for his loss of quiet enjoyment during the latter part of his tenancy. The Tenant stated that he feels he should be compensated for all the hassle and harassment he received from the Landlord over the last year or so.

The Tenant stated that this is the third hearing he has had and the Landlord has unsuccessfully tried to end the tenancy with a 2-Month Notice on more than one occasion. The Tenant stated that on August 17, 2018, the Landlord illegally moved his things out of the rental unit and locked him out. The Tenant stated that he has been punched by the Landlord and that the relationship has degraded with the Landlord.

The Landlord stated that the Tenant has been a constant nuisance over the past couple of years. The Landlord stated that the Tenant is almost always drunk, and partying with his friends to the point where they get in fights, and break things. The Landlord also stated that the Tenant continues to disconnect the smoke alarm every time he has a

party. The Landlord stated that the fire department has written him up on this issue before. The Landlord stated that the Tenant continually is aggressive towards him and denies that he illegally evicted the Tenant.

The Landlord stated that he and the Tenant agreed verbally that the tenancy would end on August 14, 2018, and then on August 17, 2018, the Landlord's wife saw the Tenant moving his belongings out of the rental unit. The Landlord stated that this is when the Tenancy ended. The Tenant stated that he did not move his things out and instead came home to find his locks had been changed and his belongings were missing.

Analysis

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 in sections 7 and 67 of the *Act*. Accordingly, 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 whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. 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 everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Loss of Quiet Enjoyment

Section 28 of the *Act*, states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the Landlord's right to enter the rental unit in accordance with section 29;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I also note:

The Residential Tenancy Branch Policy Guideline #16
(Compensation for Damage or Loss)

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- **Loss of quiet enjoyment;**
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and,*
- *Damage to a person, including both physical and mental*

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

The Residential Tenancy Branch Policy Guideline # 6
(Entitlement to Quiet Enjoyment)

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 substantial interference with the ordinary and lawful enjoyment of the premises.

In this case, the Tenant has stated that his enjoyment of the rental unit was compromised over the last year or so. The Tenant has provided statements to show that he has had several hearings, and disputes with the Landlord, and he asserts the Landlord has been harassing him. However, I note the Tenant has not provided much

corroborative evidence on this matter. Also, the Landlord has provided a completely contradictory version of events, where he indicates the Tenant has been totally disruptive, and aggressive. The Landlord stated that he issued the 1-Month Notice's for Cause because of all the issues the Tenant has created, and he issued the 2-Month Notice's because one of his family member's wanted to move in.

I have reviewed the statements and evidence, and ultimately, it is difficult to determine, without further evidence, whose version of events is more reliable. It is clear that the relationship between the parties has degraded significantly, and that the conflict is complex. However, in this case, the burden of proof is on the Tenant to prove that his quiet enjoyment was impacted, and how. I note the parties have had previous hearings, and that this causes some inconvenience to both parties. However, I find the Tenant has not provided sufficient evidence to show that he is entitled to compensation for loss of quiet enjoyment, without further proof as to how the events unfolded. I dismiss the Tenant's claim for Loss of Quiet enjoyment as I find there is insufficient evidence to prove his claim.

Conclusion

The Tenant's claim for loss of quiet enjoyment is dismissed, without leave to reapply.

The Tenant and the Landlord are granted leave to reapply for any remaining monetary items.

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: September 10, 2018

Residential Tenancy Branch