



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC ERP MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on September 11, 2018. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord and the Tenant both attended the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord acknowledged receipt of the Tenant's application, evidence and amendment. The Landlord stated he sent his evidence to the Tenant by email, which the Tenant denies receiving. As stated in the hearing, without further verifiable proof of service, I am not satisfied the Landlord has sufficiently served the Tenant with his evidence. As such, I will not be addressing the documentary evidence he submitted to the office any further. I have accepted and considered oral testimony from both parties.

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 stated that she has moved out of the rental unit. Given this, I find all of the grounds on the Tenant's application are now moot and are dismissed without leave with the exception of her application for compensation for loss of quiet enjoyment.

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 tenancy lasted about a year and a half from December 2016, until July 31, 2018. The Tenant stated that she is looking for compensation for her loss of quiet enjoyment during the last month of her tenancy. More specifically, the Tenant stated that she was harassed and disrupted from July 4-7, 2018, when she received multiple 1-Month Notice's to End Tenancy. The Tenant stated that she got 48 text messages and 3 different Notice's within this short period. The Tenant also stated that the Landlord entered her unit without permission, and stole some of her belongings.

The Landlord stated that the Tenant has exaggerated and fabricated all of this to try and get money. The Landlord acknowledged that their relationship wasn't great towards the end of the tenancy. However, he denies that he ever entered her unit illegally, or that he stole anything. The Landlord stated that the text messages he had with the tenant from July 4-7, 2018, were related to issues they were having with respect to the Tenant being late with her rent. The Landlord stated that he was not harassing her, just attempting to address the outstanding issues (repeated late payment of rent, and unpaid pet deposit). The Landlord stated that it was for these reasons that he issued the Notice's to End Tenancy.

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.

The bulk of the Tenants testimony was surrounding a loss of enjoyment and use of the property for the period of July 4-7, 2018, where she had multiple negative interactions with the Landlord over the issues that had arisen. In consideration of these issues, I turn to the following two Residential Tenancy Branch Policy Guidelines:

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.

The Tenant stated that she is looking for compensation for a loss of quiet enjoyment. However, I note she did not elaborate and explain how much she was seeking. I acknowledge that the relationship between the parties had degraded towards the end of the tenancy. However, I note that the Landlord stated he was having issues with repeated late payment of rent, and also with a pet deposit that wasn't paid. The parties appear to have had disagreements and negative interactions regarding these issues, and that several Notice's to End Tenancy were issued. The Tenant alleges that she was harassed over a few days. However, the Landlord stated that he was trying to communicate, resolve and remedy the issues he was having with the Tenant. The Landlord also denies that he entered the Tenant's unit as alleged. I find there is insufficient evidence that the Landlord entered the rental unit without permission, as alleged, and I find there is insufficient evidence that the Landlord was harassing the Tenant to the extent that she should be compensated for loss of quiet enjoyment. It is clear the parties were not seeing eye to eye on the issues that had arisen towards the end of the Tenancy. However, I do not find there is sufficient evidence to show that the Landlord was acting in the manner that the Tenant is alleging, or that he overstepped his lawful role as a Landlord.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the Tenant has failed to sufficiently demonstrate that she should be entitled to compensation on this matter. The Tenant's application is dismissed, without leave to reapply.

Conclusion

The Tenant's application is dismissed, in full, 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: September 12, 2018

Residential Tenancy Branch