Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OT, FFT

Introduction

On August 29, 2018, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*") for a monetary order for compensation from the Landlord for loss or other money owed, for other tenant issues, and the recovery of the filing fee. The matter was set for a conference call.

One of the Landlord's and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, 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 Matter – Amendment Application

At the outset of the hearing, the Tenant noted that she had submitted an amendment requested, on December 7, 2018, requesting to increase her monetary claim from $8,107.00 to $21,107.00.

The Landlord testified that he had received the Tenant's amendment request in the mail. However, he had just received it three days before this hearing and that he did not have time to prepare a response to the Tenant additional claims. The Landlord

requested that the Tenant's amendment request not be allowed as he did not have sufficient time to prepare.

Section 4.6 of the *Residential Tenancy Branch Rules of Procedure* states the following:

> **4.6 Serving an Amendment to an Application for Dispute Resolution**
>
> As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.
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> The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.
>
> In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

I accept the Landlord's testimony that he had not received the Tenant's amendment request 14 days before the hearing as required. I find that the Landlord was given insufficient time to prepare his response to the Tenant's additional monetary claim.

I find that the tenant failed to serve her amended application for an increase to her monetary claim in the allowable time limit permitted under *Rule of Procedure 4.6*. Consequently, the Tenant's application to increase her monetary claim is therefore dismissed with leave to reapply.

Preliminary Matter - Evidence

At the outset of the hearing, it was brought to this Arbitrator's attention that the Tenant had submitted her evidence four days before the hearing. When asked the Tenant provided no justification as to why her evidence was submitted late. The Tenant requested that her evidence, even though late, be allowed into these proceedings.

The Landlord testified that he had not received the Tenant's evidence package as of the date of this hearing.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure states the following:

> **3.14 Evidence not submitted at the time of Application for Dispute Resolution**
>
> Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

I have reviewed the Tenant's application, and I find that the Tenant had 100 days to prepare and submit evidence in support of her application. I find that this was sufficient time for her to prepare her cases.

I find that it would be procedurally unfair of me allow evidence submitted after the evidence submission cut date of December 7, 2018, into these proceedings. Therefore, I will not consider any evidence submitted into these proceedings, by the Tenant, after December 7, 2018.

Additionally, during the hearing, the Tenant withdrew her claim for the recovery of $107.73 in Canada Post mail forwarding services.

Preliminary Matter- *Res Judicata*

During the hearing, it was brought to this Arbitrator's attention that these parties had a previous Dispute Resolution hearing with the Residential Tenancy Branch. The Landlord testified that during that hearing the issue of the Landlord entering the rental unit without notice was addressed and that the Tenant was bringing the same issue up again in these proceedings.

The Tenant testified that the previous Arbitrator had not allowed her monetary claim into the previous hearing and that she had been given leave to reapply. The Tenant argued that she was claiming for financial compensation for the Landlord entering the rental unit without notice and that since the previous Arbitrator had granted her leave to reapply for her monetary claim that I should hear the matter again. A copy of the previous decisions had been submitted into evidence by the Tenant.

Res judicata is the legal doctrine preventing, the rehearing of an issue that has been previously settled by a decision determined by an Officer with proper jurisdiction.

I have read the previous decisions submitted into evidence by the Tenant, and I find that the previous Arbitrator had made a determination regarding the Landlord entering the rental unit without notice. I find that the principle of *res judicata* bars me from considering if the Landlords had entered the rental unit without notice prior to that decision. Therefore, I find that I can not consider the Tenant's application in regard to whether or not the Landlords entering the rental unit without notice prior to the previous hearing as that matter had already been determined in the final and binding decision dated July 16, 2018.

However, I find that the previous Arbitrators made no determination in regard to the Tenant's claim for the compensation for the Landlord entering without notice. Therefore, I will proceed with the Tenant's claim for monetary compensation based on the previous Arbitrators findings.

Issues to be Decided

- Is the Tenant entitled to a monetary order for compensation?
- Is the Tenant entitled to recover the filing fee paid for this application?

Background and Evidence

The parties agreed that the tenancy began on April 6, 2018, as a month to month tenancy. Rent in the amount of $1,000.00 was to be paid by the first day of each month and the Landlord had been given a $500.00 security deposit at the outset of the tenancy.

The parties also agreed that the tenancy ended in accordance with a Two Month Notice to End Tenancy for Landlord's Use of the Property, on August 31, 2018.

The Tenant testified that the Landlords harassed her throughout her tenancy, constantly questioning her about her electrical usage in her rental unit, requiring her to have the blinds drawn during the day, blocking her windows and continually entering her rental unit without notice. The Tenant testified that the Landlords were rude, unreasonably demanding and verbally abusive towards her. The Tenant submitted a nine-page statement detailing the events of her five-month tenancy with the Landlords.

The Landlord testified that they did not harass the Tenant but that it was the Tenant who was harassing towards them. The Landlord testified that they did ask the Tenant to keep her blinds closed during the summer months as the windows in the rental unit were south facing and that the sun heated the space and made it expensive for the central air conditioner to cool the rental unit. The Landlord testified that the Tenant did not communicate problems with the rental unit to them in a constructive way and that it was the Tenant that was causing the problems between them. The Landlord also testified that they have had to contact the local police and have a no trespassing order issued to the Tenant, due to her continually contacting them and attending the property after the tenancy had ended. The Landlord testified that even after the police order was issued the Tenant attend the property again. The Landlord submitted the police file number into documentary evidence.

The Tenant testified that the Landlord would enter her rental unit when she was away, turning off lights and heaters, and then would leave her notes telling her not to turn them back on.

The Landlord testified that they did enter the rental unit on one occasion, the same one mentioned on the previous hearing and that they were advised of their mistake in that hearing by the Arbitrator and that they have not entered again without notice.

Both parties agreed that they had a previous hearing with this office and that during that hearing the Arbitrator determined that the Landlords had entered the rental unit on one occasion without notice. The Tenant submitted a copy of the decision from the previous hearing into documentary evidence. In the decision the Arbitrator wrote as follows:

> "After considering the oral testimony and having reviewed the evidentiary packages of both parties, I find that sufficient evidence was presented by the tenant that the landlords entered the rental unit on at least one occasion without providing proper notice and for reasons that could not be described as an emergency that threated life or property. The landlord acknowledged during the hearing that the suite was entered so that the heat could be turned down and windows closed in order to ensure that the air conditioning system could function. I find this to be an unnecessary intrusion of the tenant's privacy and direct the landlords to provide proper notice as described above, should they wish to enter the tenant's suite at a future date.
>
> The landlords are ordered to provide the tenant with proper notice pursuant to section 29(b) of the *Act* should they intend to enter the rental unit."
>
> [Reproduced as written]

The Landlord testified that they are more aware of the definition of an emergency after the previous hearing and, assured this Arbitrator that they are providing proper notice before entering the rental unit and are in compliance with the *Act*. The Landlord denied the Tenants claim that he or his wife repeatedly entered the rental unit without notice.

The Tenant testified that the Landlords would also play loud music, for hours, at night that interfered with her sleep. The Tenant testified that she repeatedly requested that the Landlord turn the music down but that they would refuse.

The Landlord testified that they did not listen to loud music and had never received complaints about noise from the Tenant.

The Tenant also testified that she believed the Landlords were restricting the power to her rental unit by flipping the breaker switches that control her washer and dryer, and kitchen outlets. The Tenant testified that she believed the Landlords were doing this to make her uncomfortable, so she would move out.

The Landlord testified that at no time did they restrict the power to the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has claimed for $8000.00 in compensation from the Landlord, comprised of a full rent reimbursement for May, June, and July 2018 and $5000.00 due to loss of quiet enjoyment and harassment.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act.* A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

> “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. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In order to determine if an award for compensation is due to the Tenant, I must first determine if there has been a failure to comply with the Act by the Landlord.

During this hearing, I heard contradictory testimony from both parties regarding harassment and the nature of the verbal interactions between the Tenant and the Landlords. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, that would be the Tenant.

I acknowledge the testimony of both parties and the findings of the Arbitrator in the previous hearing, that it was found that the Landlords had, in fact, enter the rental unit on one occasion without providing notice. Although I do agree that this action of the Landlord did constitute a breach of the *Act*, I do not find that this one breach alone, establishes ongoing harassment or loss of quiet enjoyment of the Tenant sufficient to support the Tenants claim.

I have also reviewed the documentary evidence submitted by the Tenant, that met the requirements of the Rules of Procedure. However, after reviewing this evidence, I find that there is insufficient evidence before me to show that the Landlords were continually harassing the Tenant or that she suffered a loss of quiet enjoyment.

Therefore, I find that the Tenant has not provided sufficient evidence, to satisfactorily me, that the Landlords harassed her during her tenancy or that she suffered a loss of quiet enjoyment due to their actions. In the absence of sufficient evidence, I must dismiss the Tenant' claim for compensation.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in her application, I find that the Tenant is not entitled to recover the $100.00 filing fee paid for this hearing.

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: January 9, 2019

Residential Tenancy Branch