



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

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;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord acknowledged receipt of the tenant's application which was sent by registered mail to the landlord on October 25, 2018. The landlord testified that they just recently received the tenant's evidence package which was left on their front porch on February 2, 2019. The tenant testified that her evidence package was also originally sent by registered mail in a separate package at the same time as her application but was not claimed by the landlord. The tenant testified that she left the second package for the landlord just as a courtesy as she had not received any reply from the landlord. The tenant submitted the registered mail receipts as proof of service.

I find the landlord to be deemed served with the tenant's original evidence package and in either event that the landlord has received the courtesy package with sufficient time to respond. I note that the landlord has submitted a written response and their own evidence package in response to the tenant's application.

The tenant also disputed receiving the landlord's evidence package which was sent to the tenant by registered mail on January 29, 2019. The landlord provided a registered

mail receipt and tracking report which shows the item was signed for by someone at the address. The tenant confirmed the package was sent to the correct address but denied signing for or receiving the package. I find the tenant also to be deemed served with the landlord's evidence package. The hearing proceeded and all evidence submitted by both parties was accepted.

Issues

Is the tenant entitled a monetary order for compensation for damage or loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on October 1, 2016 and ended on November 30, 2016. The monthly rent was \$750.00 payable on the 1st day of each month. The rental unit is a basement suite. The landlords reside in the upper portion of the home.

The tenant was issued a One Month Notice to End Tenancy for Cause (the "One Month Notice") on October 24, 2016 and subsequently a Two Month Notice to End Tenancy for Landlord's Use of Property on October 26, 2016. The effective date of the One Month Notice was November 30, 2016 and the effective date of the Two Month Notice was December 31, 2016.

The tenant vacated the rental unit on November 30, 2016. The tenant did not provide any notice to the landlord with her intention to vacate the rental unit prior to the effective date of the Two Month Notice. The tenant had also originally filed an application to dispute both the One Month Notice and the Two Month Notice; however, the tenant's application to dispute the One Month Notice was filed late. The hearing into the tenant's application was scheduled for December 23, 2016; however, the tenant vacated the rental unit before this date, making her application to cancel both of the Notices a moot point.

The tenant is claiming the equivalent of one month's rent as compensation for notice to end tenancy for landlord's use of property. The tenant claims she did not get one month free rent under the Act.

The landlord disputes the one month free rent stating the tenancy ended pursuant to the One Month Notice which was served to the tenant before the Two Month Notice.

The tenant is claiming \$500.00 in moving expenses. The tenant claims the landlord knowingly rented her an illegal suite resulting in complaints from neighbors. The tenant submits the landlord only gave her notice to end tenancy as a result of the complaints from neighbors.

The landlord submits the One Month Notice was issued over ongoing issues they had with the tenant over parking which was the basis of the complaints from the neighbors.

The tenant is claiming \$1000.00 as compensation for ongoing harassment from the landlord. The tenant provided various examples of the alleged harassment including the landlord poisoning the lawn, not providing adequate lighting outside her unit, using a leaf blower on one occasion late at night as deliberate attempt to harass the tenant, withholding heat, blocking a pathway with their vehicle and putting metal spikes on the lawn. The tenant submits the landlord made it intolerable to stay until the end of December 2016 so she moved out early.

The landlord submits that the tenant's allegations are all unsupported. The landlord testified that it was just simple fertilizer put on the lawn and not any poison. The landlord submits they replaced bulbs in the outdoor landscape lighting to address tenants concerns. The landlord testified that the bulbs in this type of lighting were prone to burn out and the landlord ordered replacement bulbs from China which caused a bit of delay. The landlord submits that for majority of the time at least a few of the lights were working. The landlord testified that heat to the unit was working and not deliberately turned off. The landlord testified that it was winter time and it got dark outside at 5:00 so he could have been using a leaf blower near this time but was in no way was this a deliberate attempt to harass the tenant.

Analysis

Section 51 (1) of the Act provides that a tenant who receives a Notice to End Tenancy for landlord's use of property is entitled to receive from the landlord an amount that is equivalent to one month's rent payable under the tenancy agreement.

Pursuant to section 50 of the Act, a tenant may end tenancy early after being served with a Two Month Notice by giving the landlord at least 10 days written notice to end tenancy on a date that is earlier than the effective date of the landlord's notice.

I find that this tenancy ended pursuant to the One Month Notice issued to the tenant on October 24, 2016 and not the subsequent Two Month Notice. The tenant's application to dispute the One Month Notice was not filed with the 10 day time period required under the Act so the tenant is conclusively presumed to have accepted the tenancy ended on the effective date of this Notice, November 30, 2016. Further, the tenant vacated on this date and did not pursue her late application to dispute this Notice.

In either event, even if I were to find the tenancy ended pursuant to the Two Month Notice as argued by the tenant, which I do not, the tenant did not provide the landlord with at least 10 days written notice to end the tenancy prior to the effective date of the Two Month Notice. The tenant's free month as per the Two Month Notice would have been the month of December 2016 had she not vacated early.

The tenant's claim for one month's compensation is dismissed.

As I have found this tenancy ended pursuant to a legal Notice to End Tenancy issued by the landlord, I also dismiss the tenant's claim for moving costs.

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant must show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions or inactions that rendered the premises unfit for occupancy for the purposes for which they were leased. Serious examples of frequent and ongoing interference such as entering the rental premises frequently, or without notice or permission may form a basis for a claim of a breach of the covenant of quiet enjoyment.

I find the tenant has not provided sufficient evidence either by way of her oral testimony or written submissions to support a finding that there has been substantial interference

with her ordinary and lawful enjoyment of the rental premises. Individually or combined, the allegations put forth by the tenant, even if founded which they are not, do not support a finding that the landlord has breached the tenant's right to quiet enjoyment.

I dismiss the tenant's claim for compensation for loss due to alleged harassment or breach of quiet enjoyment.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the filing fee paid for this application.

Conclusion

The tenant's application is dismissed in its entirety 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: February 15, 2019

Residential Tenancy Branch