



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant was present for the teleconference hearing as was the Landlord and an agent for the Landlord (the “Landlord”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlord’s evidence. Neither party brought up any issues regarding service.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Is the Tenant entitled to monetary compensation?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement submitted as evidence. The tenancy began on October 25, 2015 and ended on February 25, 2018. Monthly rent at the end of the tenancy was \$2,650.00. The Tenant paid a security deposit and pet damage deposit at the outset of the tenancy which were returned to him through a previous dispute resolution proceeding.

The Tenant has claimed compensation in the amount of \$5,300.00, which is equivalent to two months of rent. He submitted a Monetary Order worksheet which notes that this amount is for the period between September 19, 2017 and November 18, 2017.

The Tenant provided testimony that during these two months he experienced a loss of quiet enjoyment of the rental unit through harassment, threats and intimidation from the Landlord and the Landlord's partner. He stated that this only stopped after a previous dispute resolution proceeding on November 23, 2017. The Tenant confirmed that he remained residing in the rental unit during the two months in question.

The Tenant referenced a letter dated August 5, 2017 from the Landlord. The letter was submitted into evidence and in the letter the Landlord advised the Tenant that the tenancy agreement would not be extended, and instead would end on November 1, 2017. The Tenant stated that this letter was not an official notice to end the tenancy and that since he did not accept it as such, the Landlord began to harass him due to claims that he was continuing to illegally occupy the rental unit. The Tenant also noted that the Landlord seemed to be of the belief that they had a mutual agreement to end the tenancy based on this letter.

The Tenant stated that he filed to dispute the letter to end the tenancy. The dispute resolution decision, dated November 23, 2017 was submitted in the Landlord's evidence and states that the parties came to a settlement agreement to end the tenancy on February 25, 2018.

The Tenant stated that until the November 23, 2017 decision was granted, he was under extreme duress from the actions of the Landlord and her partner. He stated that this led to police involvement. The Tenant submitted video clips of a home inspection that took place in the rental unit between the Landlord and Tenant, in the presence of a police officer. The submission of the video clips note that this inspection took place on November 2, 2017. The Tenant stated that the Landlord was well behaved during this inspection due to the presence of the police.

The Tenant further testified that the Landlord was harassing him due to an obsession with her belief that she was correct and that the Tenant should have moved out on November 1, 2017. He stated that during this period of time he was subject to belligerent and nasty behaviour from the Landlord and her partner, as well as endless emails, phone calls and in-person contact. The Tenant stated that the contact and harassment from the Landlord increased after he filed an Application for Dispute Resolution and leading up to November 1, 2017 which is the date when the Landlord wanted him to move out.

The Tenant referenced a letter from the Landlord dated October 31, 2017 in which the Landlord arranged an inspection and stated that she would be coming by once per week for an inspection. Although the Landlord did not follow through on this, the Tenant stated that this was very stressful due to not knowing if she was coming and trying to arrange for a police officer to be present in case the Landlord did attend and there were further issues.

The Tenant submitted approximately 10 emails between himself and the Landlord in which they discuss whether they had a mutual agreement to end the tenancy and also discuss that dispute resolution proceeding filed by the Tenant regarding the Landlord trying to end the tenancy. The emails submitted occurred between September 19, 2017 and October 31, 2017. In particular, the Tenant referenced one email from the Landlord dated October 27, 2017 which states in part the following:

As a result of your on going illegal occupancy of my property, I want you to be aware now that there will be consequences which you will be responsible for.
(Reproduced as written)

The Tenant also stated that the Landlord would videotape him during their interactions which was very upsetting. He stated that she would not provide 24-hour notice to attend the rental unit and due to the unpleasant personal interactions, he felt a lot of fear.

The Tenant submitted that despite this occurring in 2017, he did not apply until recently as he filed a previous application for the return of the security deposit and pet damage deposits and wanted to wait until that was resolved before applying for the claim regarding loss of quiet enjoyment.

The Tenant explained that although he continued to reside in the rental unit during this two-month period, he did not have any quiet enjoyment of the property during that time. The Tenant further stated that this is why he has claimed for the return of the full rent paid for that two-month period.

The Tenant stated that although the contact from the Landlord was not occurring on a daily basis, he felt the stress and fear daily, particularly in not knowing what was going to happen. The Tenant stated that he was concerned that the Landlord would take extreme measures such as throwing his belongings onto the front lawn or changing the locks.

The Landlord provided testimony that the video of the inspection submitted by the Tenant was the only time that the property was inspected during the tenancy. The Landlord further stated that the police were in attendance as it was the Landlord who called them due to feeling intimidated by the Tenant. The Landlord stated that there is no evidence that any harassment occurred to the Tenant and noted that none of the emails submitted by the Tenant contain any threats or intimidation.

The Landlord further stated that while the Tenant may have been worried about what might have occurred, the Landlord did not change the locks or throw his belongings on the lawn and did not communicate in a threatening or intimidating manner. The Landlord also testified that they respected the previous dispute resolution decisions as the Tenant stayed in the rental unit until February 25, 2018 as agreed upon. The Landlord noted that they also paid the Tenant double the deposits as awarded through a previous hearing with a decision dated September 21, 2018.

The Landlord stated that they really believed that there was a mutual agreement to end the tenancy on November 1, 2017 but followed through with the settlement agreement to end the tenancy in February 2018. They also stated the Landlord was not threatening but was mistaken in what her legal rights were and believed that the Tenant was still occupying the rental unit past when he agreed to leave.

The Landlord submitted into evidence the decisions from two previous dispute resolution proceedings, as well as a written statement. In the written statement and through testimony presented at the hearing, the Landlord argued in previous dispute resolution decisions the Tenant was not granted leave to reapply and that the decisions were final resolution of any issues that came up during the tenancy.

The Landlord noted that the parties agreed to end the tenancy on February 25, 2018 and that the Tenant remained residing in the rental unit until that time. The Landlord questioned why the Tenant stayed until February 2018 if living there was so stressful and if the Tenant was experiencing harassment from the Landlord.

Analysis

As the Landlord claimed that previous dispute resolution proceedings had resolved this matter without providing leave to reapply for the Tenant, the decisions submitted by the Landlord were reviewed and considered. In a decision dated November 23, 2017 the Tenant applied to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property and the Landlord applied for an Order of Possession based on a mutual agreement to end the tenancy. The parties settled the dispute and agreed to end the tenancy on February 25, 2018.

In the second decision dated September 21, 2018 the Tenant had applied for compensation under Section 51 of the *Act* and for the return of the deposits and the Landlord applied for damages against the security and pet damage deposits. As such, I do not have evidence before me to determine that the Tenant has previously applied for this current claim for loss of quiet enjoyment and therefore find that this matter has not previously been heard or a decision rendered.

As stated in Section 7 of the *Act*, if a party does not comply with the *Act*, *Residential Tenancy Regulations* or the tenancy agreement, they must compensate the other party for any damage or loss that occurs as a result.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including reasonable privacy and a freedom from unreasonable disturbance. The Tenant presented testimony and evidence stating that the Landlord's actions caused the loss of quiet enjoyment during two months of the tenancy from September 19, 2017 to November 18, 2017.

The parties provided conflicting testimony on what occurred during the months in question. The Tenant testified as to disturbing and upsetting interactions through phone, email and in-person contact including threats and belligerent behaviour. The Landlord testified as to some confusion over whether the tenancy would be ending through a mutual agreement, which was resolved through a previous dispute resolution proceeding.

As stated in rule 6.6 of the *Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, in this matter the Tenant has the burden of proof. When the parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above the testimony to establish their claim.

While the Tenant submitted email communication between the parties and a video of an inspection that took place on November 2, 2017, I fail to find evidence of the constant harassment and loss of quiet enjoyment as described by the Tenant. The video shows a police officer in attendance while the Landlord walked around the rental unit, and while the parties seemed to be in disagreement through a conversation that took place at the end of the video, the rest of the inspection seems peaceful and there is no evidence of threats, name calling, or other claims made by the Tenant.

In the emails, the parties discuss the dispute over the tenancy ending and also discuss the upcoming dispute resolution proceeding. It is clear that the Landlord was of the belief that the Tenant should move out based on the letter dated August 5, 2017, and that the Landlord would take steps to enforce this belief if needed. However, I do not find that the emails provide sufficient evidence to establish the presence of harassment or threats from the Landlord to the Tenant.

Residential Tenancy Policy Guideline 6: Entitlement to Quiet Enjoyment states the following:

A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

Based on the evidence and testimony of both parties, I am not satisfied that the Tenant experience a 'substantial interference' regarding his right to quiet enjoyment.

While I do find that the Landlord did not properly end the tenancy through the August 5, 2017 letter, this was resolved through a previous hearing on November 23, 2017. Through this hearing, the parties agreed that the tenancy would end on February 25, 2018.

I also find that the Landlord provided a letter dated October 31, 2017 in which she stated she would conduct weekly inspections of the rental unit. Section 29 of the *Act* outlines the process for a landlord to enter the rental unit and I find that the notice

provided by the Landlord did not provide a reasonable cause for entering the rental unit on a weekly basis.

As stated by both parties during the hearing, the Landlord did not conduct weekly visits as indicated in the letter. Although the Landlord did not attend the rental unit for weekly inspections, I do understand that the Tenant was of the belief that she may attend weekly which likely caused stress.

However, as stated in Section 7 of the *Act* a party claiming a loss must prove that the other party breached the *Act*. The Tenant claimed that the Landlord breached Section 28 of the *Act* and caused a loss of quiet enjoyment. While there was clearly a disagreement between the parties, I do not find sufficient evidence before me to be satisfied that the Tenant established that the Landlord breached the *Act* by disturbing the Tenant's right to quiet enjoyment.

As stated in *Residential Tenancy Policy Guideline 16*, a party claiming a loss must not only establish that the other party was in breach of the *Act*, *Regulation* and/or tenancy agreement, but must also establish the value of their loss. I do not find sufficient evidence before me to establish that the Tenant experienced loss of use of the rental unit for two whole months such that he should be refunded the entire amount paid for these two months.

While I do find that the disagreement over the tenancy ending was likely stressful and upsetting, I am not satisfied that the Tenant has proven, on a balance of probabilities, that the Landlord breached Section 28 of the *Act* and that he is owed two months of compensation as a result.

Accordingly, I decline to award any compensation to the Tenant. As the Tenant was not successful with the application, I also decline to award the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

Conclusion

The Tenant's Application for Dispute Resolution 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: March 20, 2019

Residential Tenancy Branch