



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MNDC MNSD FF

Introduction:

The applicant tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:47 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. on May 28, 2019. The landlord respondent attended the hearing and gave sworn testimony. She was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord confirmed the tenant served the Application for Dispute Resolution on her by registered mail. I find that the landlord is served with the Application according to section 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 28 and 67 for damages suffered due to the landlord not protecting their peaceful enjoyment;
- b) To obtain a refund of the security deposit; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that they have suffered damage and loss due to act or neglect of the landlord? If so, to how much compensation have then proved entitlement? Are they entitled to recover their security deposit and the filing fee?

Background and Evidence:

The tenant applicant did not attend the hearing. The landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The landlord stated that the tenancy commenced January 1, 2017, that monthly rent was \$560 initially but is \$582 currently. A security deposit of \$230 and a pet damage deposit of \$230 were paid. The tenant complained that other tenants were harassing her and at one point, the police had to attend. She claims \$10,550 from the landlord which includes the return of her security deposit. The landlord said she investigated the allegations and found the tenant had engaged in aggressive behaviour towards the

other tenants and the police were pressing charges. The video apparently showed the tenant swinging at the other tenant. The landlord issued a warning letter to the tenant dated March 12, 2019 where she states another tenant had telephoned her and said the tenant had attacked him and his girlfriend with a ski pole. She noted she had seen this aggressive behaviour towards two other tenants also.

The landlord provided evidence that the tenant gave her a Notice to End her tenancy dated March 25, 2019 to be effective May 1, 2019. Then she attempted to rescind the Notice on April 23, 2019 but the landlord noted by letter dated April 29, 2019 that she did not accept it and according to the Residential Tenancy Branch, the tenant could not unilaterally withdraw her notice. The landlord said she planned to file for an Order of Possession. The landlord said the tenant vacated April 30, 2019 and she received a text from her son to tell her. She sent the tenant's security and pet damage deposits back to her and by letter dated May 21, 2019, the tenant acknowledged receiving them. In the letter dated May 21, 2019, the tenant also said she was "releasing [the landlord] from my B.C. Tenancy Dispute Resolution meeting of May 28, 2019 at 1:30 p.m. I will no longer approach this solution at this time".

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

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.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the tenant to prove on the balance of probabilities that the landlord by act or neglect caused her losses. I find insufficient evidence that the landlord by act or neglect violated the Act or tenancy agreement. I find the weight of the evidence is that the tenant was disruptive and she disturbed the peaceful enjoyment of other tenants. I find the landlord issued a warning letter detailing her aggressive behaviour and warning her to stop. I find the tenant's documentary evidence was insufficient to show act or neglect of the landlord and she did not attend to support her claim. I dismiss the application of the tenant for damages for loss of peaceful enjoyment.

I find the evidence is that she has received the refund of her deposits so I dismiss this portion of her claim.

In respect to her Notice to End Tenancy on May 1, 2019 and then her attempt to rescind it, I find Residential Policy Guideline 11 applies. It states in Part as follows:

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

I find the landlord did not consent to withdrawal of the tenant's Notice. She expressly told the tenant by letter that she did not consent to it. Although the tenant has vacated, she requests an Order of Possession effective May 1, 2019 pursuant to the Notice.

Conclusion:

I dismiss the tenant's Application in its entirety without leave to reapply. I find she is not entitled to recover her filing fee due to lack of success. I find the landlord is entitled to an Order of Possession effective May 1, 2019 pursuant to the tenant's Notice to End her tenancy on that date. As she has vacated, I find it is not necessary to serve the tenant with this Notice or to have it enforced.

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: May 28, 2019

Residential Tenancy Branch