



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, MNDCT, FFT

Introduction

On July 20, 2020, the Tenant made an Application for Dispute Resolution seeking a to restrict the Landlord's right to enter pursuant to Section 70 of the *Residential Tenancy Act* (the "Act"), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing, evidence package, and Amendment were served to the Landlord by registered mail on July 23, 2020. The Landlord confirmed that she received this package and understood that the Tenant increased the amount of monetary compensation she was seeking to \$500.00 plus \$185.00 for moving fees. Based on this undisputed evidence, I am satisfied that the Landlord was served with the Notice of Hearing, evidence package, and Amendment. Furthermore, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

The Landlord advised that she served her evidence to the Tenants by registered mail on multiple dates. The Tenant advised that she did not receive this evidence; however, she was prepared to proceed without seeing it. As such, I have accepted this evidence and will consider it when rendering this Decision.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that as

she had vacated the rental unit, this hearing would primarily address her claims for monetary compensation, and that her other claims would be dismissed.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 10, 2020 and ended when the Tenant gave up vacant possession of the rental unit on August 1, 2020. Rent was established in the amount of \$1,175.00 per month and was due on the first day of each month. A security deposit of \$587.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenant advised that she is seeking compensation in the amount of **\$500.00** for her loss of quiet enjoyment of the rental unit and **\$185.00** as the cost of having to move due to the Landlord's behaviour. She stated that within days of the tenancy starting, she received multiple texts from the Landlord regarding garbage and compost. In addition, she was prevented access to the garage so that she could not dispose of garbage and compost, and she did not have access to laundry either. She eventually had access to these services, but she would have to text the Landlord, and this became an ongoing battle.

She stated that she was overwhelmed by the amount of texts, warning letters, and notices for entry that the Landlord gave her. As well, the Landlord would knock on her door, slip notes under it, and harassed her one time at her front door to the point that

she did not feel safe. She provided a warning letter to the Landlord about her behaviour, on July 16, 2020. She stated that she moved from her last rental because the landlord was using drugs and she wanted to find stable housing. She advised that it was difficult for her to put a monetary amount on her loss; however, the amount of compensation she is seeking is what she believes is equivalent to what she has suffered. As well, given that she did not intend on having to move again so quickly, she is requesting compensation for her moving expenses. She submitted a considerable amount of documentary evidence to support her position.

The Landlord submitted documentation from the Tenant's previous landlord demonstrating that the Tenant caused problems there and was hypersensitive to sound. She stated that this indicates that the Tenant is not being truthful about this situation and is manipulative. Regarding the garbage situation, she stated that the municipality prohibits garbage bins to be placed outside unsecured, as there is lots of wildlife around. However, she placed the bin outside for the Tenant, despite the Tenant previously being ok with the garbage being stored in the garage.

With respect to the laundry, when the Tenant viewed the rental unit, they agreed that she could do laundry whenever she texted the Landlord. However, when the Tenant texted to do laundry, the Landlord was not available. She stated that they agreed to regular laundry days after that.

The Landlord refuted the Tenant's allegations that she communicated excessively with the Tenant. She searched her email history and found that she initiated seven emails to the Tenant. Every other email was in response to the Tenant's correspondence. She stated that the Tenant initiated 24 text messages and she stopped responding to them if the Tenant sent more than four at a time. She advised that she did not harass the Tenant and she submitted a witness statement to corroborate this. In addition, she gave the proper written notices for entry, pursuant to the *Act*. She also stated that she was attending school and studying, so she did not have time to harass the Tenant. She submitted a considerable amount of documentary evidence to support her position.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 28 of the *Act* outlines the Tenant's right to quiet enjoyment and states that the Tenants are entitled to reasonable privacy and freedom from unreasonable disturbance.

Furthermore, Policy Guideline # 6 explains the covenant of quiet enjoyment and that "A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it."

Section 67 of the *Act* outlines that compensation may be awarded for damage or loss that has resulted from a breach of the *Act*.

Moreover, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Tenant's complaints about unreasonable disturbances from the 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. Given the contradictory testimony and position of the parties with respect to these claims, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the testimony and evidence of the parties, for a tenancy that was as short as this one, I find that there is an abundance of communication between the parties that is excessive and borders on unreasonable. While I understand that the parties made attempts to correct some issues, I also find that both parties created issues unnecessarily. The sheer volume of communication, and how quickly issues escalated between the parties, causes me to find that both parties are at fault. Clearly, both parties had personality differences which led to miscommunication, misunderstandings, and friction between them.

As the burden of proof is on the Tenant to substantiate her claims, I am not satisfied that she has provided sufficient testimony that the Landlord is solely to blame for the discord between the parties. In addition, the fact that the Tenant applied for Dispute

Resolution within 10 days of the tenancy starting causes me to doubt that the Tenant was reasonably handling these issues. Rather, she contributed to the dissolution of any semblance of a successful tenancy. As such, I find that I am doubtful of the credibility of the Tenant's submissions in this Application. As I am not satisfied that the Tenant was also not at fault in this Landlord/Tenant relationship, I do not find that the Tenant has established the validity of the claims in her Application. Consequently, I dismiss her claims in their entirety.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Tenant's Application 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: September 22, 2020

Residential Tenancy Branch