



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, FFT

Introduction

On November 7, 2020 the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") asking to cancel a One Month Notice to End Tenancy dated November 7, 2020 ("the One Month Notice"), a monetary order for damage or compensation, and for the return of the filing fee.

The matter was set for a conference call hearing. The Tenant, the Tenant's Representative C.V., and the Landlords attended the hearing at the appointed date and time and were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me

At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

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 Matters

At the start of the hearing, the parties stated that they had come to a mutual agreement to end the tenancy effective at 12:00 PM on January 1, 2021. The parties agreed that the Landlords are to be provided with an order of possession effective **12:00 PM on January 1, 2021**. The hearing continued based on the Tenant's claim for monetary compensation.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on October 11, 2020. During the tenancy, the Tenant was required to pay rent in the amount of \$700.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$300.00 which the Landlords continue to hold.

The Tenant is seeking monetary compensation in the amount of \$1,170.00 in relation to three areas of concern;

The Tenant stated that the Landlord interfered with her right to have a guest attend her rental unit. The Tenant stated that her boyfriend stayed at the rental unit periodically while he was seeking other accommodations in the area. The Tenant stated that her boyfriend should have been considered as a guest, not as an additional occupant. The Tenant stated that the Landlords objected to the Tenant's boyfriend attending the rental unit claiming that it breached the fire code and threatened to call the authorities. The Tenant stated that the Landlords had a one-week guest policy and attempted to charge the Tenant an additional \$500.00 for the additional occupant which contradicts the *Act*.

Lastly, the Tenant stated that she has suffered a loss of quiet enjoyment and loss of income as a result of the Landlord's breaching the *Act* as she felt uncomfortable, unwelcomed, and harassed. The Tenant stated that she felt as though she could not stay in the rental unit, causing her to find other accommodations from October 26 to 30, 2020. The Tenant stated that she also missed work as a result. As such, the Tenant is claiming for monetary compensation in the amount of \$1,170.00. If successful, the Tenant is also seeking the return of the filing fee.

The Landlords responded by stating that they felt as though the Tenant's boyfriend attended the rental unit frequently and they became concerned that the Tenant and her boyfriend had moved in together. The Landlords stated that the tenancy agreement between the parties stipulates that the Tenant cannot have a guest stay longer than one week and cannot have any one else living on the property without permission from the Landlords. The Landlords stated that the rental unit is small and is suitable for one person.

The Landlords stated that they offered to have the Tenant's boyfriend added to the tenancy agreement for an additional \$500.00. The Landlords stated that they served the Tenant with several caution notices, as the verbal communication between them was

not effective. The Landlord stated that they served the Tenant with a One Month Notice as the Tenant and her boyfriend did not comply with their requests. The Landlords denied that they harassed the Tenant or made her feel uncomfortable or unwanted.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 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 what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlords. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

Section 30(1) of the *Act* states that a Landlord must not unreasonably restrict access to residential property by;

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

Section 13 of the *Act* requires that a Landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004, and a tenancy agreement must comply with any requirements prescribed in the regulations and must set out the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies.

Section 5(1) of the Residential Tenancy Regulations states that a landlord must not charge a guest fee, whether or not the guest stays overnight.

Section 14 of the Act provides that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the Landlord and Tenant agree to the amendment.

Section 47 of the Act provides that a Landlord may end a tenancy by giving notice to end the tenancy if there are an unreasonable number of occupants in a rental unit.

Section 28 of the Act states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 also sets out that;

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

While I understand the Landlords' concern for the safety and security of the rental property, the Landlord does not have the authority to restrict the Tenant's boyfriend's access to the rental unit or to compel the Tenant to add her guest to the tenancy agreement. I find the tenancy agreement does not contain a term that specifies how the rent will vary depending upon the number of occupants. Since there is no term that specifies a variance in rent for an additional occupant, any variance in rent needs to be agreed upon by both parties. I find that there is insufficient evidence to establish that the Tenant's guest is living in the rental unit full time. I find that it is reasonable for the Tenant to have her guest over. The Tenant's guest is her boyfriend who maintains a separate residence and the couple often spend time together.

In relation to the Tenant's monetary claim, I find that the Tenant has provided insufficient evidence that she suffered a loss or to support the value of the loss. I accept that the Landlords communicated their concerns regarding the Tenant's guest at the rental unit, however, I find that these communications were respectful and do not constitute substantial interference that is frequent or ongoing. Furthermore, the Tenant provided insufficient evidence to demonstrate how the Landlord's actions prevented the Tenant from residing in the rental unit between October 26 to 30, 2020, or from attending work. As such, I dismiss the Tenant's monetary claim without leave to reapply.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was not successful with her application, I find that she is not entitled to the return of the filing fee.

Conclusion

The parties mutually agreed that the tenancy will end at 12:00 PM on January 1, 2021. The Landlord is provided with an order of possession effective at **12:00 PM on January 1, 2021.**

The Tenant's monetary claim 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: December 23, 2020

Residential Tenancy Branch