



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, OLC, PSF, MNETC, MNDCT, FFT

Introduction

Introduction

The Tenant filed an Application for Dispute Resolution on June 10, 2021 seeking:

- to dispute a One Month Notice to End Tenancy for Cause (the “One-Month Notice”)
- more time to dispute the One-Month Notice
- provision of services/facilities required by the agreement or law
- the Landlord’s compliance with the legislation and/or the tenancy agreement
- reimbursement of the Application filing fee.

The Tenant filed a second Application on August 5, 2021, seeking:

- compensation related to a Notice to End Tenancy for Landlord’s Use of Property (the “Two-Month Notice”)
- compensation for monetary loss or other money owed
- reimbursement of the Application filing fee.

After an adjournment in 2021 to ensure both the Tenant’s and the Landlord’s compliance with the necessity of full document disclosure, the matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 16, 2022.

The Tenant attended the hearing; the Landlord did not attend.

Preliminary Matter – Landlord attendance

A separate Arbitrator adjourned this matter on October 8, 2021. This was to ensure both parties' exchange and service of documentary evidence. After this, the Residential Tenancy Branch issued a new Notice of Dispute Resolution advising of the following date and time and contact information of the new hearing.

The record at the Residential Tenancy Branch shows the information was sent to the parties on October 12, 2021. After this, an evidence deadline reminder was sent to the parties on April 25, 2022, and a reminder of the hearing date and time on May 13, 2022.

From this, I find the Residential Tenancy Branch advised the Landlord of the hearing date and time, to the fullest extent possible in these circumstances.

In this May 16, 2022 hearing, the Tenant stated they provided their evidence to the Landlord via email on October 9, 2021. Their last actual communication was with the Landlord at the hearing in October 2021. The Landlord was not in attendance to confirm if they received documentation from the Tenant.

In this May 16, 2022 hearing, the Tenant stated they received evidence from the Landlord on May 5, 2022, noting that date was "too late".

I proceeded with the hearing based on the affirmed testimony of the Tenant, who told me they provided their evidence to the Landlord via email on October 9, 2021. I note they did not provide proof in the form of documentation of that transaction; however, the Tenant was present to provide affirmed testimony on their claim.

Preliminary Matter – the One-Month Notice

In the hearing, the Tenant confirmed they moved out from the rental unit on July 27, 2021. This in effect cancels their desire to contest the One-Month Notice issued by the Landlord on June 3, 2021.

Given that the Tenant provided testimony that they moved out from the rental unit on July 27, 2021, the validity of the One-Month Notice is not in issue. For this reason, I dismiss the Tenant's Application to cancel the One-Month Notice.

Given that the tenancy ended, there is no need for a decision on the provision of services/facilities as that concerns an ongoing tenancy agreement. Similarly, the Tenant's claim for the Landlord's compliance with the legislation and/or tenancy agreement is premised

on an ongoing landlord-tenant relationship that ended in 2021. I dismiss each of these issues, along with the Tenant's claim for the Application filing fee, without leave to reapply.

Background and Evidence

The Tenant provided a copy of the tenancy agreement in their evidence and spoke to the relevant terms in the hearing. The agreement shows the tenancy started on September 1, 2020 and was scheduled to end at the end of a fixed-term on August 31, 2021. The base rent amount of \$1,350 did not increase over the length of this tenancy. The agreement indicates that basic utilities (including water) are included with the rent. The agreement also indicates there was parking for 2 vehicles.

In the hearing, the Tenant clarified that they rented the upper portion of the house. The Landlord and their 5-person family rented out the basement portion of the house. In a summary report that appears in their evidence, the Tenant noted the Landlord was trying to end the tenancy since they took up residence in the basement. This included "yelling, cursing and swearing in the laundry room, forcing [the Tenant] to turn off the heater in winter, and forcing [the Tenant's] family not to use parking lot spaces and garage spaces."

On July 19, 2021 the Tenant advised the Landlord they would be moving out by the end of that month via text message. According to the Tenant, the Landlord agreed "you can move out."

The Tenant's position in this matter, and the basis for their monetary claims, is that the Landlord was trying to force the end of the tenancy. For the first part of their claim, the Tenant feels they are entitled to, and properly owed, the final month of rent in return because of the reason the Landlord sought to end the tenancy.

The Tenant noted there were other previous tenants in the basement rental unit that the Landlord evicted. The Tenant submitted the Landlord wanted to use the upper portion of the house for themselves in addition to the space they currently occupied in the basement. According to the Tenant, the Landlord sought to end the tenancy by using a One-Month Notice, instead of the Two-Month Notice to End Tenancy for Landlord's Use, which would entail the Tenant having the final month of rent free.

The Tenant presented that they asked the Landlord several times for a proper Two-Month Notice to End Tenancy for this reason; however, the Landlord did not serve that kind of notice to them. The previous basement tenants *did* receive a notice such as this from the Landlord. The Tenant believes the Landlord sought to end the tenancy by forcing the Tenant out through

other diverse tactics such as turning off the heat, eliminating garage and parking use, instead of the legal way of ending with a Two-Month Notice to End Tenancy for Landlord's Use. This is because the Landlord wanted to avoid paying rent.

On this piece of their claim, the Tenant claims the final month of rent, for \$1,350.

The Tenant applied a per-day rate to the amount of time they were without running water in the rental unit, for a claim of \$784. This was from July 11 to July 29, after discovering there was no water running on that first day. They asked the Landlord about this on the first day of its occurrence, then followed up their requests 2 and 5 days later. The plumber never came, despite the Landlord's assertion. At one point, according to the Tenant, the Landlord stated they could not fix the water problem because they had no money.

As evidence for this, the Tenant provided two videos showing no water emerging from their faucet. They also provided the text messages from July 11 and July 12, at one point stating: "It's been over a week without water." The Landlord reported the issue was a "waterline problem" and also added "sewer line there is a problem."

The Tenant also applied for compensation for the \$440 moving fee they paid on July 27, to hasten their move out. They claimed this piece because this move-out was not their decision, being forced to move out of a housing arrangement where there was no running water.

The Tenant described having access to the garage for parking. The Landlord denied this access in March 2021 prior to the end of the tenancy. The Tenant included an image of the locked garage door in their evidence. For this, they claimed \$600, which was \$100 per month they did not have access to the garage.

Finally, the Tenant claimed \$2,700, which represents two months of rent. This is compensation for the entirety of the seven-month duration that they described as "unjoyful living." In the hearing they described the Landlord making a lot of "ridiculous requirements", for example no slippers because of the sound from the floor above. Additionally, there was no heater in the winter months. This was the Landlord making around 100 calls per week, about 3 times per week, and "every week it was something different." This eventually turned into the Landlord following the Tenant on a regular basis and shouting at them for miscellaneous issues.

On this point the Tenant submitted a series of three pictures showing the shared driveway space. The Landlord would allegedly use the Tenant's own parking space. Additionally, the Tenant provided an image of their own mail in the recycling bin. They also submitted a

compiled file of sound recordings of the Landlord shouting, making threats, and “verbal violence.”

Analysis

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 in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

For the Tenant’s claim for their final month of rent free, in the amount of \$1,350, the Tenant’s claim here is premised on their belief that the Landlord wanted to move into the upper unit that the Tenant was renting. In the hearing, the Tenant made it clear that the Landlord did not state directly that they wanted that rental unit for their own living arrangement.

The Tenant’s claim here is premised on their understanding of the situation; however, this relies for the most part on inference and conjecture. The Tenant provided no solid evidence, or testimony, of dialogue from the Landlord that the Landlord was seeking to use the upper unit for their own family. That would normally form the basis for the Landlord issuing that type of Two-Month Notice, which would entail the final month rent-free as per s. 51 of the *Act*.

The Landlord did not issue a Two-Month Notice to End Tenancy for the Landlord’s Use of the Property; however, this tenancy ended based on the Tenant’s own notice to the Landlord. That was on July 19 as the Tenant confirmed in the hearing, for the tenancy-end-date of July 27 when the Tenant moved out. I find as fact that the Tenant initiated the end of this tenancy and not the Landlord; therefore, the Landlord is under no obligation to pay for the final month rent-free because s. 51 does not apply in this situation. I grant no compensation to the Tenant for this piece of their Application, and I dismiss this piece without leave to reapply.

Important to the Tenant's claim of not having water for an extended period is the principle of mitigation. How did the Tenant minimize their loss? There is no record of the Tenant calling a plumber on their own or attempting to fix the water issue immediately which would be the normal course of events. For this piece, the Tenant is claiming the full amount of rent on a daily basis. There is no record they were without use of the rental unit in its entirety during this time. In sum, because I am not satisfied the Tenant made efforts to rectify the situation on their own immediately, I make no award for this piece of the Tenant's claim, with no evidence to show they minimized the damage to them.

I find the Tenant chose to end the tenancy on their own. By their own testimony, this was with very short notice to the Landlord in July 2021. They chose the method and schedule of their move out, and there is no evidence the Landlord was controlling that process for them or forced them to choose one method over another. Simply put: it was the Tenant's choice to hire a moving company and end the tenancy when they did. No part of this expense shall be borne by the Landlord, and I dismiss this piece of the Tenant's claim.

The Tenant provided no evidence on their claim that their access to the garage was cut off by the Landlord. There is a single image showing a locked garage. There is no evidence of their communication of this to the Landlord, and what the Tenant relies on as proof of this right to them is from the tenancy agreement but there is no mention of the garage in the tenancy agreement. There is insufficient evidence to justify an award to the Tenant for this; therefore, I dismiss this piece of their claim.

To show the unjoyful living for a seventh-month timeframe, the Tenant submitted a 12:20 minute sound file. This depicts the Landlord playing music loudly, and "verbal violence." The Landlord speaks their own first language, which apparently is the same as that of the Tenant. The contents of the sound file are not known, and despite some harsher-sounding vocal inflections, the content of what the Landlord is saying is not known at all. This is not sufficient evidence to show a severe hardship to the Tenant which is what a full refund of rent would entail. The Tenant must demonstrate how their quiet enjoyment, or the value of the tenancy overall was damaged by the actions of the Landlord. I cannot assume that difficulty of any sort was present to the Tenant based on this sound file.

Similarly, a single photo depicting the parking situation on the driveway is not ample evidence to show anything more than an inconvenience to the Tenant and does not represent evidence anywhere close to what is required to show hardship.

Overall, the Tenant presents insufficient evidence on this piece of their claim to show the actions of the Landlord imposed a hardship. I cannot see hardship beyond inconvenience to

the Tenant based on what they present here. I dismiss this piece of the Tenant's claim for this reason, without leave to reapply.

Conclusion

For the reasons set out above, I dismiss the Tenant's claim 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 s. 9.1(1) of the *Act*.

Dated: May 17, 2022

Residential Tenancy Branch