



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNC, FFT, MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on March 2, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord comply with the Act;
- an order to cancel a One Month Notice to End Tenancy for Cause; and
- an order granting the return of the filing fee.

The Tenant amended their Application on June 2, 2022 seeking monetary compensation for loss of quiet enjoyment in the amount of \$4,000.00.

The Tenant submitted an additional amendment to their Application on June 6, 2022 seeking the return of their security deposit.

The hearing was scheduled for 9:30AM on June 20, 2022 as a teleconference hearing. Only the Tenant appeared at the appointed date and time. No one appeared for the Landlord. The conference call line remained open and was monitored for 25 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

The Tenant received an order granting substituted service dated March 24, 2022, which permits the Tenant to serve the Landlord with the Notice of Hearing, amendments, and documentary evidence via email, which is deemed served three days later pursuant to the *Act*.

The Tenant testified the Application and documentary evidence package was served on the Landlord by email on March 10, 2022. A copy of email was provided in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence three days later, on March 13, 2022.

The Landlord submitted some documentary evidence in response to the Tenant's Application, however, no one attended the hearing to respond to the Tenant's Application, or to present the Landlord's evidence for my consideration.

The Tenant stated that they served the first amendment to Landlord by email on June 2, 2022. The Tenant provided a copy of the email in support. I find pursuant to Section 89 and 90 of the *Act*, the Landlord is deemed to have been served with the Tenant's first amendment three days later, on June 5, 2022.

Preliminary Matters

The Tenant stated that they served the second amendment to the Landlord on June 6, 2022. The Tenant provided a copy of the email in support. I find pursuant to Section 89 and 90 of the *Act*, the Landlord is deemed to have been served with the Tenant's second amendment three days later, on June 9, 2022.

According to the Residential Tenancy Branch Rules of Procedure 4.6 Serving an Amendment to an Application for Dispute Resolution As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure. In any event, **a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.**

I find that the Tenant's second Amendment, for the return of their security deposit, is deemed to have been received by the Landlord on June 9, 2022, which is less than 14 days before the hearing on June 20, 2022. As such, I find that the Tenant's second Application is dismissed WITH leave to reapply. This is not an extension of any statutory timelines.

At the start of the hearing, the Tenant stated that the tenancy has ended on May 18, 2022. As such, I find that the Tenant's claim to cancel and One Month Notice, and for an order that the Landlord comply with the Act are now moot, and therefore dismissed WITHOUT leave to reapply. The hearing proceeded based on the Tenant's monetary claim which was included in the Tenant's first amendment on June 2, 2022.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

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 an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The Tenant testified that the tenancy began on November 17, 2021 and ended on May 17, 2022. During the tenancy, rent was due in the amount of \$2,300.00 per month. The Tenant testified that he paid a security deposit of \$1,150.00 the Landlord.

The Tenant is claiming \$4,000.00 relating to harassment and breach of quiet enjoyment. The Tenant referred to their documentary evidence titled "Personal statement & Timeline of Events" which outlined communications between the Tenant and the Landlord throughout the tenancy.

The Tenant stated that shortly after the tenancy started, the Landlord indicated that they were seeking to return to occupy the rental unit. The Tenant stated that the parties had agreed to a fixed term tenancy, therefore, the Tenant spent a considerable amount of

time researching what the Tenant's rights were and spent time responding to the Landlord. The Tenant stated that the Landlord became frustrated with the Tenant and began harassing him in retaliation. The Tenant provided a long list of interactions between the Landlord and the Tenant which related to several issues during the tenancy. The Tenant stated that the Landlord continues to have negative interactions with the Tenant since the end of the tenancy as well.

Analysis

Based on the uncontested documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

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.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

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.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

The Residential Tenancy Branch Policy Guideline #16 Compensation For Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *Loss of access to any part of the residential property provided under a tenancy agreement;*

- *Loss of a service or facility provided under a tenancy agreement;*
- *Loss of quiet enjoyment;*
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *Damage to a person, including both physical and mental*

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In this case, the Tenant referred to communications between the Landlord and the Tenant throughout the tenancy. The Tenant stated that they constitute harassment and a breach of quiet enjoyment. The Tenant is claiming \$4,000.00 given the amount of time it took to research the Tenant's rights and to respond to the Landlord.

I find that the Tenant has provided insufficient evidence to demonstrate that the communications between the Landlord and Tenant substantially interference with the ordinary and lawful enjoyment of the premises. While there is evidence that there were disrespectful communications from the Landlord towards the tenant after the end of the tenancy, I find that I am unable to award damages for incidents that have occurred beyond the end of the tenancy.

I find the fact that the Tenant took time to educate himself about his rights, does not merit compensation and it is the cost of doing business as a Tenant and Landlord. As such, I dismiss the Tenant's claim for monetary compensation as there is insufficient evidence from the Tenant that the Landlord substantially interference with the ordinary and lawful enjoyment of the premises. As the Tenant was not successful with their Application, I find that they are not entitled to the return of the filing fee.

Conclusion

The Tenant's Application is dismissed without leave to reapply. The Tenant is still at liberty to reapply for the return of their security deposit, which was not considered in this decision.

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: June 20, 2022

Residential Tenancy Branch