



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNL-MT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant May 16, 2022 (the “Application”). The Tenant applies as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property and for more time to dispute this notice
- For compensation for monetary loss or other money owed
- To recover the filing fee

The Tenant appeared at the hearing with D.N., their witness. D.N. was not involved in the hearing until required. The Landlord appeared at the hearing with R.Q., the co-landlord (the “Landlords”). I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Landlord provided the correct rental unit address which is noted on the front page of this Decision.

The Tenant withdrew their dispute of a Two Month Notice to End Tenancy for Landlord's Use of Property and for more time to dispute this notice, and the Landlord agreed to the withdrawal.

The Tenant clarified that their request for compensation is for \$7,500.00 for harassment and having to store appliances.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and the parties confirmed receipt of these. The co-landlord took issue with not receiving the hearing package and Tenant's evidence; however, the co-landlord is not a named party in this matter and therefore the Tenant was not required to serve the co-landlord.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant testified that there was a written tenancy agreement between the parties. The Tenant testified that the tenancy started June 01, 2020, and was for a one-year fixed term. The Tenant testified that rent was \$2,100.00 due on the first day of each month. The Landlords testified that there was only a verbal tenancy between the parties. The Landlords agreed the tenancy started June 01, 2020, and stated there was no term discussed. The Landlords agreed rent was \$2,100.00 due on the first day of each month.

As stated, the Tenant sought \$7,500.00 for harassment and having to store appliances.

In relation to having to store appliances in the rental unit, the Tenant testified as follows. Broken appliances were being stored in the garage of the rental unit when the Tenant moved in. The Landlords said they would remove the appliances; however, they never did. The appliances remained in the garage until the new owners took possession of the rental unit September 24, 2021. The Tenant could not park their car in the garage due to the appliances in the garage.

The Tenant relied on text messages in evidence to show the Landlords said they would remove the appliances. The Tenant sought \$1,500.00 for this issue.

In response, the Landlords testified as follows. The appliances in the garage were working appliances meant for the rental unit and were there when the Tenant moved in. The appliances were not removed from the garage. The Tenant did park in the garage throughout the tenancy. The Tenant asked that the appliances be removed on July 15th; however, the Landlords had just replaced the appliances and needed help getting them out of the garage.

In relation to harassment, the Tenant testified as follows. The Landlords issued the Tenant a Two Month Notice because the Tenant wanted issues around the rental unit addressed and the Landlords did this with prior tenants. The Landlords wanted to end the tenancy so they could increase the rent. The Landlords told the Tenant they would either sell the house or move into the house. The Tenant had to tell the Landlords to complete a proper Two Month Notice and that the Landlords could not end the tenancy without giving full two months notice. The Landlords never gave the Tenant 24 hours notice to attend the rental unit. Fights between D.N. and the co-landlord would occur over the co-landlord showing up at the rental unit. The co-landlord would tape letters to the rental unit door. The Landlords would send text messages to the Tenant at 9:00 or 9:30 p.m. which the Tenant found rude. The Tenant's medication had to be increased due to anxiety caused by the Landlords. The Tenant missed work and almost lost their job due to anxiety caused by the Landlords.

D.N. testified about the Tenant being told by the Landlords that they were moving into the house or selling it and evicting the Tenant and this causing the Tenant stress due to COVID-19 being rampant and there being no rentals available. D.N. testified that the situation between the parties escalated from there. D.N. testified that the co-landlord would show up to the rental unit without providing notice to the Tenant. D.N. testified that the Tenant and their son experienced increased stress. D.N. testified that the Tenant had to take a leave of absence from work and increase their medication due to the stress. D.N. testified that the co-landlord would do things such as show up and dig up the side of the yard without telling the Tenant they were going to do this.

The Landlords testified as follows in relation to the harassment allegations. The Tenant is not accurately portraying the Landlords or their behaviour. The Tenant is not telling the truth. The Landlords received texts and calls from the Tenant daily or weekly about fixing things at the rental unit. The relationship between the parties was fine until the Landlords issued the Tenant a Two Month Notice after which the Tenant took issue with the co-landlord attending the rental unit to repair things despite the Tenant asking for repairs. The Landlords always gave the Tenant notice before entering the rental unit.

The issues the Tenant is raising relate to being issued a Two Month Notice, nothing more. The Landlords do not understand what they did wrong to cause this claim.

The Tenant submitted the following relevant documentary evidence:

- The Two Month Notice dated May 04, 2021
- A doctor's letter about the Tenant experiencing increased stress from June to September of 2021
- Two written statements from the Tenant
- Text messages between the Tenant and co-landlord
- A photo of the appliances in the garage
- Notices to Access Property dated June 29, 2021, July 03, 2021, and July 05, 2021
- A letter from the Landlords withdrawing the Two Month Notice June 25, 2021
- Emails between the parties

I note that some of the documents submitted by the Tenant were also submitted by the Landlord.

Analysis

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I am not satisfied based on the evidence provided that the Tenant is entitled to compensation for appliances being kept in the garage of the rental unit.

The photo in evidence shows the appliances were kept along the wall of the garage and that there was still space in the garage. Given the photo, I am not satisfied the Tenant could not park their vehicle in the garage due to the appliances.

Further, there is no issue that the appliances were present at the start of the tenancy because the parties agreed on this. If the Tenant wanted the appliances removed, the Tenant should have asked the Landlords in writing to remove them. Although the text messages from June and July of 2021 show the Tenant referring to the Landlords removing “stuff” from the garage, it is the co-landlord who initiated the discussion about removing items from the garage. Further, the text messages refer to “stuff” being removed, not appliances being removed. I do not see in the documentary evidence where else the Tenant asked the Landlords to remove the appliances.

As well, even accepting the text messages in evidence show the Tenant asked that the appliances be removed, I do not accept that this was a serious issue for the Tenant because there is no written communication about the appliances being removed from

June 01, 2020, to June 14, 2021, the first year of the tenancy. Nor is there continuous written communication about appliances being removed

In the circumstances, I am not satisfied the Tenant suffered any real loss in relation to the appliance issue or that the Tenant mitigated any loss they did suffer. This claim is dismissed without leave to re-apply.

In relation to harassment, the parties disagreed about this, and I have focused on the documentary evidence before me. The documentary evidence does not support that the Landlords harassed the Tenant. The documentary evidence does not show that the Landlords contacted the Tenant excessively. The documentary evidence does not support that the Landlords continually showed up at the rental unit. The documentary evidence does not support that the Landlords attended the rental unit without notice and in fact shows the opposite. The communications between the parties show that the Landlords only contacted the Tenant about tenancy related issues and that they communicated in an appropriate manner. I find there is nothing in the documentary evidence to suggest that the Landlords harassed the Tenant.

I acknowledge that the Tenant called D.N. as a witness who testified that the Landlords harassed the Tenant. However, here, I have two parties who say the Landlords harassed the Tenant and two parties who say the Landlords did not do so. I do not find any of the parties to be far enough removed from the Tenant and Landlord to be more compelling than the others. Further, it is clear the parties communicated through text message, email and written notices during the tenancy. If the Landlords were harassing the Tenant, I would expect there would be some documentary evidence to support this. Here, not only does the documentary evidence not support that the Landlords were harassing the Tenant, but it tends to show that they were not doing so.

In the absence of further evidence, I am not satisfied the Tenant has proven that the Landlords harassed the Tenant and I dismiss this claim without leave to re-apply.

Given the Tenant has not been successful in the Application, I decline to award the Tenant reimbursement for the filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 05, 2022

Residential Tenancy Branch