



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUCCESS REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was reconvened from a hearing previously scheduled to be heard on September 23, 2013, to deal with an Application for Dispute Resolution filed by the tenant seeking monetary compensation. The tenant is claiming a refund of \$850.00 in overpaid rent and \$500.00 in damages.

Both parties were present at this hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matter

The parties testified that the landlord repaid the \$850.00 in overcharged rent in September, just prior to the previous hearing. Therefore, the only matter still before me is the tenant's claim for damages.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation under section 67 of the Act for damages or loss?

Background and Evidence

The tenancy began in September 2007 and current rent is set at \$1,089.00.

The tenant testified that, at a previous dispute resolution hearing held on January 9, 2013, in which the tenant was seeking compensation for construction disturbance, a one-time rent abatement in the amount of \$200.00 was ordered as compensation. In the

decision, the tenant was directed to reduce her rent due on February 1, 2013, by this amount.

The tenant testified that she had already given the landlord post-dated cheques for rent in the amount of \$1,050.00, including February's rent. However, in accordance with the January 9, 2013 decision, the tenant submitted a new cheque to the landlord for the reduced amount of \$850.00, with trust and expectation that the landlord would abide by the order made and cash the \$850.00 cheque rather than deposit the post-dated cheque of \$1,050.00 for the regular rent being held by the landlord. The tenant testified that the landlord did not cash the \$850.00 cheque, and instead deposited the original post-dated cheque for \$1,050.00. The tenant pointed out that this was in defiance to the January 9, 2013 order from Residential Tenancy Branch.

The tenant testified that, to correct the landlord's apparent oversight, the following month she again submitted a cheque for \$850.00 payable on March 1, 2013, which was duly cashed by the landlord and the tenant stated that she believed the matter was resolved.

However, according to the tenant, on May 1, 2013, the landlord deposited her regular postdated cheque in the amount of \$1,050.00, but inexplicably also cashed the tenant's first \$850.00 February 1, 2013 cheque, as well. Apparently, the landlord had retained this February cheque and suddenly chose to deposit it.

The tenant testified that, when she realized that her account was suddenly depleted of \$1,900.00 instead of the usual rental rate of \$1,050.00, the tenant sent an email on May 5, 2013 to the landlord outlining the details of the over-paid rent. The tenant testified that, on May 6, 2013, the tenant went to personally meet with the landlord's agent and submitted her banking information with the expectation that the landlord's mistake would be rectified without delay.

The tenant testified that the agent advised her that he would deal with the matter. The tenant testified that she waited but received no further response. On May 13, 2013, the tenant again sent an email urging the landlord to take immediate steps rectify the excessive rent collection and stated that it was causing her family significant hardship and stress.

The tenant testified that, when she again received no response after waiting a week, the tenant went to speak directly with the landlord's agent once more and was told that she should cancel the \$1,050.00 post-dated cheque being held by the landlord for June 1, 2013 and resubmit \$200.00 payment. The tenant was assured that she would be credited with the \$850.00 towards rent owed for June 2013.

The tenant testified that, on June 16, 2013, she was shocked to receive a 10-Day Notice to End Tenancy for Unpaid Rent. The tenant testified that she contacted the landlord by email immediately, but receiving no response, the tenant paid the alleged shortfall, despite it not being genuinely owed. The tenant testified that she did not want to jeopardize the continuation of her tenancy.

However, the tenant also made an application for dispute resolution on June 17, 2013 seeking compensation for the \$850.00 in overpaid rent and \$500.00 additional damages. The tenant testified that she considers the landlord's action to be a reprisal for the fact that she had been successful in a prior dispute resolution hearing and was granted a \$200.00 rent abatement back in January 2013.

The tenant testified that the landlord succeeded in creating undeserved stress for the family and even caused her to miss some time at work.

The landlord did not dispute that the events occurred as described by the tenant, but attributed the initial and subsequent incidents to "*accounting errors*". The landlord emphasized that there was never any intentional attempt to defraud the tenant. The landlord also pointed out that, in their opinion, they had resolved the matter without undue delay.

The landlord stated that, when the tenant received the 10-Day Notice to End Tenancy for Unpaid Rent in June, 2013, she had the right to dispute it and should have done so. The landlord testified that, instead, the tenant chose to pay the amount claimed as "arrears" and made an application for the return of the overcharged rental funds, along with additional damages. The landlord feels that this was not an appropriate course of action for the tenant to take.

The landlord's position is that the tenant did not have to force them to go through with this hearing at all, because they had finally voluntarily repaid the tenant for the overcharged rent in September 2013. The landlord felt that there was no need for the tenant to pursue this arbitration. The landlord did not agree that the tenant is entitled to any further monetary compensation, beyond the repayment of the funds that were mistakenly collected. The landlord stated that the tenant is motivated solely by greed.

The landlord observed that, if this tenant is found to be entitled to any compensation for inconvenience or loss of quiet enjoyment, then the landlord will also be justified in making the same claim themselves and they will be seeking compensation for all of the inconvenience, waste of time and grief that this tenant's actions have caused them throughout her tenancy.

The landlord believes that the tenant's claim has absolutely no merit and should be dismissed.

Analysis

Section 7 of the Act states that if a party fails to comply with the Act, or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and to order payment under such circumstances.

I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant to prove a violation of the Act or agreement and a corresponding loss.

In regard to the tenant's allegation that the landlord violated the Act and agreement by neglecting to comply with the rent abatement order, I find that this is not in dispute. The decision of January 9, 2013 gave clear directions and it was established through the testimony of both parties that, whether intentional or not, the landlord failed to follow the decision in any regard.

Also not in dispute is the fact that the landlord collected excessive rent in violation of the section 43 of the Act and contrary to the tenancy agreement.

In regard to the tenant's claim for compensation, the Act protects a tenant's right to not be disturbed in their tenancy and provides 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 [*landlord's right to enter rental unit restricted*];

(d) use of common areas for reasonable, lawful purposes, free from interference.

I find that the landlord has contravened the sections of the Act discussed above.

I find that if a tenant is subjected to:

- a landlord's arbitrary refusal to follow orders issued in a Dispute Resolution decision,
- overcharging of rent in excess of the permitted under the Act,
- unreasonable inconvenience and disturbance caused by the landlord's failure to follow the Act and Agreement,
- reprisals for pursuing enforcement of the Act or agreement, and
- vexatious attempts to terminate a tenancy.

it could be concluded that compensation for any resulting losses under section 7 of the Act may be warranted.

I find that, regardless of whether or not the landlord's transgressions were contrived or accidental as claimed, the landlord's delay in responding to repeated errors on their part, in a timely and efficient manner caused the tenant significant inconvenience and unreasonable disturbance and this constitutes noncompliance with section 43(b) of the Act.

Even if I accept the landlord's vague explanations as to how these irregularities occurred, I find that the landlord's inaction thereafter placed unconscionable responsibilities upon the tenant by forcing her to make repeated futile attempts to resolve problems that were created by and, owned by, the landlord and their administration. I find that the landlord has readily acknowledged that the problems were not caused by the tenant, nor were they within the tenant's control to prevent or rectify. Despite this fact, I find that, the landlord allowed the resulting course of events to unfairly impact the tenant by destroying her peace of mind and undermining her family's financial stability over a prolonged, and inexcusable, period of time.

I find that, during the hearing, this landlord was defiant and unrepentant about their violations of multiple sections of the Act and indifferent to the adverse effect these

violations had on the tenant's life. I find that the landlord's apparent disdain for the tenant to be undeserved, particularly as the tenant, unlike the landlord, had completely complied with the Act and agreement in every respect.

Given the evidence, I find that the tenant's claim for compensation meets all elements of the test for damages. Accordingly, I grant the tenant a retro-active, one-time, rent abatement in the amount of 5% per month for the seven--month period between February 1 and September 1, 2013. This reflects the amount of time it took for the landlord to finally resolve the outstanding matter. Accordingly, I find that the tenant is entitled to total monetary compensation of \$575.00, comprised of \$525.00 abatement for loss of quiet enjoyment and the \$50.00 cost of the application.

Upon receipt of this decision, I hereby order that the landlord refund the tenant's post-dated cheque for rent that is due for the next month, after which the tenant will then give the landlord a new cheque for the total rent due, **minus the abated amount of \$575.00**. I have included a monetary order for the tenant to serve on the landlord to ensure that the landlord's accounting records accurately reflect the ordered abatement to avoid any errors or misunderstanding.

Should the landlord neglect to follow this order, whether by accident or design, or should the landlord make any attempt to undermine the decision or inflict reprisals on the tenant in future, I order that the tenant is at liberty to make a further application to seek damages, including aggravated damages, if deemed warranted.

Conclusion

The tenant is partially successful in the application and is granted a monetary compensation for a one-time retro-active rent abatement due to devalued tenancy.

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: November 20, 2013

Residential Tenancy Branch

