



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, OPT, AAT, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation, for an order of possession of the rental unit, for an order directing the landlord to provide access to the rental unit and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. Both parties gave affirmed testimony.

At the start of the hearing the tenant informed me that she had not resided at the rental unit for approximately one year and had not paid rent since November 2015. The tenant stated that she had attempted to pay rent but the landlord refused to accept it. The tenant also informed me that she does not intend to return to live in the rental unit but would like to be granted access to retrieve her belongings.

Since the tenant does not want to rent the rental unit any more, her application for an order of possession is moot and accordingly dismissed.

This matter was initially heard on January 21, 2016. The Arbitrator dismissed the tenant's application. The tenant applied for a review hearing and was successful in her application. In a decision dated March 01, 2016, the reviewing Arbitrator granted the tenant a review hearing that was scheduled for this date. The tenant had adequate time from March 01, 2016 prior to this hearing today on April 20, 2016, to file documents into evidence and provide copies to the landlord.

The tenant acknowledged receipt of evidence submitted by the landlord. The tenant stated that she had evidence to support her monetary claim but was unable to serve it to the landlord or file it into evidence because she could not find a fax machine that was in good working order.

Issues to be decided

Is the tenant entitled to a monetary order for compensation and for the recovery of the filing fee? Is the tenant entitled to be granted access to the rental unit?

Background and Evidence

The tenancy started in 2006. The tenant sublet the rental unit to the current occupant. The tenant stated that she has not lived in the rental unit for approximately one year but has never officially moved out. The tenant's share of rent is \$425.00.

The parties discussed the removal of the tenant's belongings and came to an agreement on the date and time that the tenant would be granted access to the unit. The parties agreed that the tenant would retrieve her belongings on May 02, 2016 between 10:00 am and 2:00 pm. The tenant agreed that after this window of time to retrieve her belongings, she would not have access to the rental unit and any belongings left behind would be disposed of by the landlord at the tenant's expense.

The tenant stated that on December 24, 2012, she had a fall inside the rental unit due to poor lighting. The tenant broke one of her front teeth and incurred costs to replace the tooth. The tenant stated that she contacted the landlord several times with requests to cover her dental expenses, but the landlord refused to. The tenant has made a claim in the amount of \$4,000.00 for dental work but did not file documents to support her claim.

Analysis

The tenant stated that she sustained an injury to her tooth in December 2012. The tenant did not make application for dispute resolution at the time the injury occurred or shortly after. In addition the tenant did not file documentary evidence to support her monetary claim of \$4,000.00.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the tenant's failure to make a claim for compensation by filing an application for dispute resolution in a timely fashion, or shortly after, pursuant to the doctrine of laches, I find that this aspect of the tenant's application must hereby be dismissed.

The tenant has not proven her case and therefore must bear the cost of filing her application.

Conclusion

The tenant's application is dismissed in its entirety.

The landlord must provide the tenant with access to the rental unit, on May 02, 2016 between the hours of 10:00 am to 02:00pm.

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: April 20, 2016

Residential Tenancy Branch