



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on August 29, 2016. The Tenant filed seeking \$1,400.00 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord acknowledged receipt of the Tenant's application, notice of hearing documents, and evidence submissions. No issues regarding service or receipt were raised. As such, I accepted the Tenant's documentary submission as evidence for these proceedings. The Landlord affirmed that she had not submitted documentary evidence in response to the Tenant's application.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Tenant proven entitlement to monetary compensation?

Background and Evidence

On August 15, 2016, the parties entered into a written fixed term tenancy agreement which was scheduled to begin on August 29, 2016 for the duration of 7 months. Rent of \$700.00 was payable in advance on the first of each month and on August 4, 2016 the Tenant paid \$350.00 as the security deposit.

The Tenant testified that on August 27, 2016, two days before she was scheduled to move into the rental unit, the Landlord sent her an email saying the Landlord's family

requested the apartment. A copy of that email was submitted into evidence and states, in part, as follows:

*...I have had a fortunate first day with my family.
They have invited themselves to an extensive stay.
This means that I will have to allow them to move in. Unfortunately for you I have to terminate our past arrangement...*

[Reproduced as written]

The Tenant submitted that she was put under pressure by the Landlord cancelling their agreement as she had already given her notice to move out of her previous unit and had made all the required arrangements to move. She stated she attempted to negotiate with the Landlord to let her move into the unit for a month in order to allow her to find another place, as the Landlord knew she was about to start school, and the Landlord refused.

In addition, the Tenant asserted it took several back and forth messages before the Landlord returned her \$350.00 security deposit. The Tenant now seeks \$1,400.00 compensation equal to two month's rent to accommodate the stress and pressure she was put under due to the Landlord breaking her agreement and her having to find another place to live.

The Landlord testified that the Tenant had asked the Landlord to include "special writing about the heat comfort level" in the tenancy agreement. After she entered into that written agreement the Landlord said she checked the suite and found there were serious insulation issues which would cause her electricity costs to be too high. The Landlord argued the Tenant set a "subjective standard" for her heating comfort level which the Landlord felt she could not meet. The Landlord stated she was of the opinion that as a result of not being able to meet those standards she felt the contract was frustrated.

The Landlord stated that by the Tenant accepting the return of her deposit it made the Landlord believe the contract had been cancelled. She then turned to ask the Tenant what were the actual damages or losses the Tenant incurred and did the Tenant ask to stay in her previous unit.

The Tenant confirmed that she did not suffer any specific additional losses, other than her stress and having to look for another place to live. She submitted that she was fortunate to find a "transitional place" to live while she finds another unit. She confirmed she is still living in that temporary arrangement and said it takes, on average, upwards of two months to find a suitable rental unit as she has to wait for units to come available.

The Tenant submitted that she had given her formal notice to end her previous tenancy and stated it was not legal for her to cancel that notice. She noted that her previous unit had been shown to prospective tenants and she believed there were other people moving into her unit.

A brief discussion took place whereby I informed both parties the types of damage and loss provided for under the *Act*, which included specific itemized losses, loss of quiet enjoyment, and aggravated damages.

The Landlord submitted that she had signed the tenancy agreement based on the Tenant's subjective requests and then chose to investigate the suite afterwards. She asserted the Tenant had high expectations which left loose ends with their agreement. After signing the agreement the Landlord looked into the quality of the space and she felt she could not proceed with the agreement. The Landlord stated she re-rented the suite to another tenant effective September 15, 2016.

The Tenant argued there had been only one conversation about the heating which occurred during the walk through. She stated the Landlord wrote down their mutual agreement and they both signed it, as per the copy submitted into evidence. The Tenant noted that the Landlord told her that the Landlord's family would be moving into the suite and yet she stated in the hearing she re-rented it to another tenant. She said she was entitled to the return of her deposit as there was no way she could convince the Landlord to let her move into the unit. Her acceptance of the deposit was not an agreement to end the tenancy.

Analysis

The *Residential Tenancy Act* (the *Act*) and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters, as follows:

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 16 of the *Act* stipulates that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline 6 states, in part, when considering a claim for loss of quiet enjoyment, "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

In addition, Policy Guideline 6 provides that an arbitrator may award aggravated damages where a serious situation has occurred or been allowed to occur. Aggravated damages are damages which are intended to provide compensation to the applicant rather than punishing the erring party, and can take into effect intangibles such as distress and humiliation that may have been caused by the respondent's behaviour.

Policy Guideline 34 states that a tenancy agreement is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

The undisputed evidence was the parties entered into a written tenancy agreement, for a 7 month fixed term, commencing August 29, 2016. The Landlord accepted the \$350.00 deposit on August 4, 2016. On August 27, 2016 the Landlord breached that fixed term agreement denying the Tenant access to the rental unit and unilaterally cancelled the tenancy agreement.

I found the Landlord's submissions to be contradictory. First she informed the Tenant she could not proceed with the tenancy because her family was moving into the unit. Then at the hearing she argued there was not enough insulation in the rental unit so the

agreement was frustrated. In addition, she stated she could not meet the requirements of the agreement because the Tenant's request for comfortable heat levels was "subjective". Then the Landlord confirmed she re-rented the unit to another tenant September 15, 2016, in absence of evidence that the insulation in the rental unit had been altered.

I concur with the definition of frustration, as described in Policy Guideline 34, as listed above. As such, I have not considered the Landlord's argument that the tenancy agreement was frustrated due to a lack of insulation in the rental unit. I did not consider the Landlord's argument because a lack of insulation does not constitute an unforeseeable event. If there truly was a lack of insulation in the rental unit, the Landlord would have been found not to have done her due diligence prior to entering into a tenancy agreement and the Landlord may also be found not to have properly repaired or maintained the unit, as required by section 32 of the *Act*, as listed above.

I do not accept the Landlord's assertion that the Tenant's action of accepting the return of her deposit was an agreement to end the tenancy. The rights and obligations to this tenancy remained in full force and effect, pursuant to section 16 of the *Act*, until such time as the tenancy ended in accordance with the *Act*.

I find the Landlord was negligent in changing her mind about the terms of the agreement after mutually agreeing to those terms and putting them into writing. That negligent action let to the Landlord's deliberate and wilful act of cancelling the tenancy agreement in contravention of the *Act*.

While there are provisions under sections 46, 47, 48, and 49 of the *Act*, whereby a landlord may cancel a tenancy for specific reasons and with specific notice and compensation, there is no provision in the *Act* which allows a Landlord to simply cancel a tenancy agreement unilaterally without providing the Tenant with proper notice; without cause; and/or without compensation as required in specific circumstances.

In determining the amount of compensation the Tenant is entitled to, I have considered that the Landlord's breach caused the Tenant to suffer a loss of quiet enjoyment in breach of section 28 of the *Act*. That loss was equal to 100% of the value of the seven month fixed term tenancy agreement, as the Tenant had reason to believe that she would be able to occupy the rental unit for the full term of the tenancy agreement.

In addition, there was sufficient evidence before me to prove the Tenant suffered distress caused directly by the Landlord's action of unilaterally cancelling the tenancy agreement in breach of the *Act*. There was also evidence before me that at the time of the hearing on November 23, 2016 the Tenant had not yet secured another place to live and was still residing in a temporary living arrangement.

I have also considered that if the Landlord ended this tenancy due to a family member moving into the unit pursuant to section 49 of the *Act*, she would have had to serve the Tenant a two month notice to end tenancy for landlord's use and would have been

required to provide the Tenant compensation equal to one month's rent. That notice could not have been effective until the end of the fixed term which in this case was March 30, 2017, 7 months after the tenancy started. If the unit was not occupied by a family member, as is the case in this matter, the Landlord would have been subject to paying the Tenant additional compensation equal to two months' rent, pursuant to section 51 of the *Act*.

Therefore, I concluded the Tenant's request for compensation equal to two month's rent had merit. Accordingly, I granted the Tenant's application for \$700.00 loss of quiet enjoyment plus \$700.00 in aggravated damages, for a total award of **\$1,400.00**, pursuant to section 67 of the *Act*.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$100.00**, pursuant to section 72(1) of the *Act*.

The Landlord is hereby ordered to pay the Tenant the sum of **\$1,500.00** (\$1,400.00 + \$100.00) forthwith.

In the event the Landlord does not comply with the above Order, the Tenant has been issued a Monetary Order for **\$1,500.00**. This Order must be served upon the Landlord and may be enforced through Small Claims Court.

Conclusion

The Tenant was successful with her application and was granted a Monetary Order in the amount of \$1,500.00.

This decision is final, legally binding, and 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 25, 2016

Residential Tenancy Branch