

DECISION

Dispute Codes: MNDC

Introduction

This hearing dealt with an application by the tenants for a monetary order for money owed and compensation for loss under the *Act* and the tenancy agreement.

Preliminary Matter

At the beginning of the hearing, the tenants explained that their monetary claim included the amount of the security deposit, applicable accrued interest and double the security deposit. At the time, the landlord agreed for this issue to be dealt with in this hearing. The hearing proceeded with this understanding and both parties gave evidence regarding the issue. Towards the end of the hearing, the landlord tried to rescind his agreement, stating that he considered the amount of the security deposit to be part of the tenants' compensation.

I do not find reasonable, the landlord's assertion that the amount of the security deposit was part of the tenants' compensation. I further find that there was an agreement between both parties for this particular issue to be included in the application and the hearing proceeded as such. The issue of the return of the tenants' security deposit therefore forms part of this application.

Issues to be Decided

Whether the tenants are entitled to a monetary order for the amount of the security deposit, applicable accrued interest and double the security deposit?

Whether the tenants are entitled to a monetary order as compensation for a breach of quiet enjoyment of the rental unit?

Background and Evidence

On October 22, 2006, the landlord collected a security deposit in the amount of \$540.00 from the tenants. The tenancy began on November 1, 2006 for a fixed term ending October 31, 2007. A monthly rent in the amount of \$1080.00 was payable in advance on the first day of each month.

The tenants said that when they moved in, they understood that some renovations of the building would be taking place. However, by mid to end of November 2006, the construction noises became so loud and frequent that they were unable to work, sleep or enjoy the rental unit. In some instances, construction work even took place on Saturdays. In December, the tenants decided to go away in order to get away from the noises. In January 2007, the tenants called the police on two occasions regarding the noise. The police attended the property and on one occasion, stopped the construction work that was taking place on a Saturday evening.

Since the end of November, the tenants had made numerous complaints to the management of the building. As a result, the property manager offered to relocate the tenants to a unit in another building owned by the same landlord. The tenants viewed several units but declined the offer as they found the units unsuitable. In early March 2007, the tenants, by their own efforts, found another unit to rent for March 15. The tenants asked the management to allow them to end tenancy early without having to pay for the aggravated damages of \$540.00 specified in the tenancy agreement. In the hearing, the landlord said that he had agreed to the tenants' request. On March 15, 2007, the tenants moved out. A move-out condition inspection was completed on March 30, 2007.

On either March 14 or 15, 2007, the tenants provided the landlord with their written forwarding address. On April 10, 2007, the landlord sent a check for the amount of \$77.53 to the tenants as return of their security deposit. A statement dated April 5, 2007 from the landlord was submitted. This statement shows that the landlord deducted \$540.00 as an amount for “lease break”. The tenants said that they had phoned the landlord on several occasions to dispute the deduction but they were unsuccessful in getting a response. The landlord said that the \$540.00 deduction was a clerical error.

Analysis

Issue #1 – Whether the tenants are entitled to a monetary order for the return of the security deposit, applicable accrued interest and double the security deposit?

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit. I find that the tenancy ended on March 30, and that the tenants provided their forwarding address in writing on or about March 15. I further find that the landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant’s forwarding address in writing.

I find that the tenants have established a claim for the security deposit of \$540.00, accrued interest of \$16.88, and double the base amount of the security deposit in the amount of \$540.00, for a total of \$1019.35. The tenants acknowledged having received \$77.53 from the landlord as a partial return of their security deposit. The tenants are therefore entitled to recovery of a balance of \$1019.35.

Issue #2 – Whether the tenants are entitled to a monetary order as compensation for a breach of quiet enjoyment of the rental unit?

Both parties agreed that during the tenancy, the building was undergoing major redevelopment and there were ongoing construction activities. The tenants submitted some of the notices from the landlord stating the specific work and time of these construction activities.

The tenants said that starting from mid to the end of November, 2006, their right to quiet enjoyment of the unit was breached by the frequent and loud noises emanating from the construction activities. The male tenant said that he worked night shifts and had difficulties sleeping during the day in the unit. Therefore, on several occasions, he had gone to a friend's home and slept on the couch. A letter dated February 7, 2007 from the tenants stated that the female tenant worked at home and the noise disturbances had made it difficult for her to concentrate on her work and to talk on the telephone. The letter also states that the noise disturbances had aggravated a health condition of the female tenant and she had to seek counseling for stress. As well, the relationship between the two tenants became strained. In December, the tenants decided to go away for the month due to the noise disturbances.

The landlord did not dispute that there were noise disturbances emanating from the construction activities. He said that when the tenants moved in, they were aware of the scope of the re-development as some construction had already started and there was an artist rendering of the project in the building lobby. The landlord also did not dispute the need of some compensation and in fact tried to settle the issue of compensation with the tenants prior to the hearing. The landlord is disputing the amount of compensation sought by the tenants.

The tenants said that the noise disturbances started from mid to end of November and persisted till the end of their tenancy. They claimed that their

quiet enjoyment of the unit was breached during this period. Based on the above, I find that there was a breach of the tenants' quiet enjoyment of the rental unit for the stated period. I further find reasonable for the tenants to be compensated for 25% of their rent for a period of 4 months between the end of November and March 30 for a total amount of \$1080.00.

The tenants are also seeking recovery of costs associated with their move such as moving costs and re-connection charges for utilities. The tenants were unspecific as to the amount of such costs and no documentary evidence was submitted to support such a claim. I therefore dismiss the tenants' application in this regard.

Conclusion

Based on all of the above, I find that the tenants have established a total claim of \$2099.35. They are also entitled to recovery of the \$100.00 filing fee for this application. I grant the tenants an order under section 67 for the balance due of \$2199.35. This order may be filed in the Small Claims Court and enforced as an order of that Court.