



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR MNR MNSD MNDC O FF

Introduction

This hearing dealt with applications by the landlord and the tenant. The landlord applied for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant applied for monetary compensation for loss of quiet enjoyment. The landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing the landlord stated that as the tenant had moved out they no longer required an order of possession. I therefore dismiss that portion of the landlord's application. The landlord stated they served notice of the hearing on the tenant by posting it to his door. The tenant stated that he never received notice of the landlord's application and was not aware that the landlord had made an application. An application for a monetary order cannot be served by posting, and on that basis I dismiss the remainder of the landlord's application with leave to reapply.

The landlord submitted documentary evidence in response to the tenant's application, but they did not serve a copy of that evidence on the tenant. I therefore did not admit or consider those documents in my decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for loss of quiet enjoyment?

Background and Evidence

The tenancy began on July 1, 2008, with monthly rent in the amount of \$420. The tenant rented a basement suite in a house. Other tenants rented the upstairs portion of

the house. The tenant's evidence was that from the outset of the tenancy until he vacated on March 31, 2009, the upstairs tenants were constantly noisy late at night and he only had a total of approximately 14 nights over the nine months where there was no noise. The tenant made several complaints to the landlord, but it did not appear that the landlord did anything to stop the upstairs tenants from making noise. At the beginning of December 2008 the tenant made further complaints, and rather than resolve the noise problem the landlord served the tenant with a notice to end tenancy for cause. The tenant seeks recovery of all of the rent he paid for the tenancy, totaling \$3780.

The landlord's response to the tenant's claim was as follows. The landlord received the tenant's noise complaints and asked the upstairs tenants to work things out between themselves and the downstairs tenant. The landlord's position was that it was unreasonable for the downstairs tenant to expect no noise, but he still asked the upstairs tenants to be quiet. The landlord stated that two upstairs tenants moved out because of the downstairs tenant.

Analysis

Landlords are responsible for ensuring that tenants have quiet enjoyment of their rental unit. In this case, the landlord did not take responsibility for ensuring that the downstairs tenant had quiet enjoyment of his rental unit. I therefore find that the tenant is entitled to compensation for loss of quiet enjoyment. However, the tenant could have applied for dispute resolution and sought to resolve the problem much earlier in the tenancy. I also find that the tenant's claim for recovery of all of the rent paid is excessive. I therefore find it is reasonable for the tenant to be compensated \$50 per month for loss of quiet enjoyment for the last three months of the tenancy, for a total of \$150.

The tenant is also entitled to recovery of the \$50 filing fee for the cost of his application.

Conclusion

The portion of the landlord's application regarding the order of possession is dismissed. The remainder of the landlord's application is dismissed with leave to reapply. The landlord is not entitled to recovery of the filing fee for their application.

I grant the tenant an order under section 67 for the balance due of \$200. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated May 14, 2009.