

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC; RR; FF

Introduction

This is the Tenant's application for a Monetary Order for compensation for damage or loss; for a rent reduction for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlords.

I reviewed the evidence provided by both parties prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to a reduction in rent?
- Is the Tenant entitled to recover the cost of the filing fee from the Landlords?

Background and Evidence

The Tenant testified that from January, 2009 to June, 2009, he was constantly disturbed by other tenants who lived in the rental unit above him. The other tenants were keeping the Tenant awake by their noisy behaviour, including jumping and loud drumming, to such a degree that the Tenant was not able to sleep and was too tired to go to work. The Tenant called the Police on six occasions, who attended at the rental unit. The Police told the Tenant to ask the Landlord to deal with the upstairs tenants, but the Landlord's reaction was to tell the Tenant to leave. The Tenant is claiming damages for lost wages because he was unable to go to work. The Tenant provided an Employee History Detail Journal for the period between January and June, 2009, from his

employer. He also provided a letter from his Union stating what the Tenant's potential earnings would have been between December 1, 2008 and June 25, 2009. The Tenant could not say how much work he lost, but thought it was probably in the value of around \$21,000.00.

The Landlord's agent testified that the Landlord did go to the upstairs tenants and told them to keep the noise down, but that it really wasn't that noisy.

The Tenant testified that two years ago, he planted a 150 square foot herb garden in the back yard. He spent a lot of time and money tending the garden, which was beautiful. There was an article written in the Vancouver Sun attesting to the beauty of his garden. The Landlord destroyed his garden and the Tenant is claiming damages for the cost of the plants. The Tenant testified that he had planted at least 1,000 plants in the garden, and that plants usually cost about \$2.50 each.

The Tenant testified that he had some lumber stacked neatly against a fence in the yard at the rental unit. Other tenants moved the lumber to the side of the house where it isn't sheltered by the elements. The lumber is now ruined and was worth approximately \$200.00.

The Landlord's Witness testified that she is the Tenant's neighbour. She stated that the Tenant kept moving his garden, making it bigger, and it was encroaching on the other tenants' use of the yard. The Witness testified that the Tenant got a lot of the plants free from the across the street and that the garden was unsightly and full of weeds.

The Landlord's agent testified that the Landlord had not given the Tenant permission to plant a garden in the back yard, which is shared by all of the tenants. When other tenants and neighbours complained about the garden, lumber and the Tenant's compost bin attracting vermin, the Landlord gave the Tenant notice that he would have to remove the lumber, fit the compost bin with a functioning lid, and remove the garden, or reduce its size. The Landlord gave the Tenant the notice on April 4, 2009, and gave the Tenant until April 31, 2009 to comply.

The Landlord's agent testified that the harsh winter had killed off the Tenant's plants and that the Tenant had not complied with the Landlord's notice to remove the garden or reduce its size by April 31, 2009. The Landlord did not destroy the Tenant's garden, but did erect a garden box in May for the Tenant to use, rather than encroaching on the rest of the garden.

Analysis

I have carefully considered the testimony and evidence of both parties. The Tenant has not proven his claim that his upstairs neighbours made noise sufficient to prevent him for working, nor did his documentary evidence support the allegation that the Tenant lost wages due to noisy neighbours. The documents merely provide dates that the Tenant did work and the dates that the Tenant could have potentially worked. The Tenant has not proven his claim for lost wages and I dismiss this portion of his monetary claim.

I accept the Landlord's agent's testimony that the Landlord did not give the Tenant permission to plant a garden in the back yard. Furthermore, the Landlord provided a copy of the warning letter he gave to the Tenant with respect to the removal or reduction in size of his garden. The Tenant signed the document, indicating that he received the notice on April 4, 2009. I dismiss this portion of the Tenant's monetary claim.

There was no proof of the value of the Tenant's lumber, and no proof that the Landlord had moved it from the side of the fence to the side of the house. Therefore I dismiss the Tenant's monetary claim with respect to the lumber.

The Tenant has not been successful in his application and is not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Tenant's application is dismissed in its entirety, without leave to reapply.

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: September 25, 2009