



Dispute Resolution Services

Residential Tenancy Branch

Ministry of Housing and Social Development

DECISION

Dispute Codes

MNDC, OLC, RR,

Introduction

This hearing was convened in response to applications by three (3) tenants within a quadrant residential property, for a monetary order for money owed or compensation for *damages or loss* under the Act, regulation or tenancy agreement, an order for the landlord to comply with the Act, regulation, and to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Both the tenants and the landlord were represented in the hearing and each was given opportunity to make submissions and provide testimony to this hearing.

At the outset of the hearing it was agreed that the tenant's request for an order for the landlord to comply with the act is no longer required (as the subject problem individual of this matter vacated). It was further agreed that the request to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided, is in respect to rent already paid, and is actually pertaining to issues covered under the *damage or loss* claim - for the months of March to July 2009, inclusive.

Therefore, this decision respects the tenant(s) claim for compensation for damage or loss. Specifically, the tenant(s) claim that the quiet enjoyment of their residential units was breached due to the deliberate or negligent act or omission of the landlord. Each of the three tenants claims compensation in the amount of their monthly rent *for each of the months* of March to July 2009 (5 x \$610, \$636, \$750 respectively).

Issues(s) to be Decided

Are the tenants entitled to the monetary amount(s) claimed?

Background and Evidence

The tenants claim that due to the landlord's negligence, an undesirable and problem tenant was permitted to reside in the residential property longer than necessary after problems with the tenant were brought to the attention of the landlord. The tenants claim that the landlord did not employ their best efforts to minimize disruption to the their tenancies.

The tenants testified that in March 2009, the undesirable tenant moved into the quadrant residential property. Soon after they moved in the tenants claim they notified the landlord that there were, "multiple people living there, 24/7", and that the rental unit was extremely noisy and disruptive to the other tenants. There were also complaints expressed to the landlord that there was drug dealing in the rental unit. The tenants explained that the conduct of the problem tenant left them feeling unsafe and unsupported by what they claim was indifference by the landlord; and, on occasion, had to resort to calling police.

The landlord testified that they, at no time, abandoned their responsibility to the other tenants and sought all legal avenues and practical methods to try and evict the undesirable tenant. The landlord testified that they responded to the tenant's complaints by visiting the residential property and speaking with the problem tenant, involving and consulting the police, convening a multi-agency inspection (police, fire, health, Hydro, and by-laws) of the problem tenants unit, and issuing regular Notices to End the tenancy in a timely manner when rent was validly not paid on time. The landlord conceded that, like the other tenants, their fear of the undesirable tenant made them cognoscente of their own steps - treading carefully for fear of retaliation. Eventually the landlord determined to issue a Notice to End for Cause. The tenant's thinking is that this step should have been done much sooner in the tenancy so as to avoid any disruption to the other tenants.

Both tenants and landlord describe the situation as potentially volatile if it were not handled with proper considerations.

The undesirable tenant was subsequently convinced by the landlord to vacate days after the tenants filed for dispute resolution.

Analysis

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, solely, of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

Therefore, the claimant bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* due to the actions or neglect of the other party – that the other party was negligent in respect to their obligations.

In this matter I have carefully considered the tenant's claim for loss of quiet enjoyment by considering:

- the amount of disruption to the tenants
- the reason and circumstances surrounding the disruption
- whether or not the landlord made his or her best efforts to minimize disruptions to the tenant, and,
- whether the landlord did all that was reasonable, and safely possible to mitigate the tenant's disruption.

On preponderance of the evidence, and on the balance of probabilities, I prefer some portions of the evidence offered by the tenants, and some portions offered by the

landlord. I find the landlord took a cautious approach, understandably so as not to inflame the situation for everyone concerned, including the other tenant's families. With the benefit of retrospect, I can also see the tenant's view that the landlord could have issued the undesirable tenant with a Notice to End for Cause, at an earlier date – the consequences of which may or may not have been different than what ultimately evolved.

I generally prefer the evidence of the landlord over that of the tenant. I am not satisfied, and the tenant has proven, that the landlord was deliberately or inadvertently negligent in their actions or that the landlord was unreasonable in their approach to this matter. However, the evidence is not in dispute that there was a burden placed on the tenant's right to quiet enjoyment. I find the landlord's approach did not exploit a key means to alleviate the tenant's disruption by issuing a One Month Notice to Vacate in a more timely fashion. For this reason I award each tenant nominal damages in the amount of **\$200**.

Conclusion

I Order that each tenant (tenancy) may deduct **\$200** from a future rent.

Dated September 14, 2009.