

DECISION

Dispute Codes: MNDC

Introduction

This is the Tenant's application for a monetary order for compensation for loss of quiet enjoyment of the rental unit.

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?

Background and Evidence

The Tenant moved out of the rental unit on July 20, 2009, as a result of a non-disputed Notice to End Tenancy. The Tenant stated that she did not dispute the Notice to End Tenancy because she did not wish to live in the rental unit any longer, due to harassment from the Landlords. The Tenant testified that the Landlords were constantly and unnecessarily asking permission to enter the Tenant's home in order to do inspections. When questioned further, the Tenant stated that these inspections took place on a monthly basis, but could not be specific about dates.

The Tenant testified that the Landlords would phone her early in the morning on her day off, and arrive at her doorstep unannounced.

The Tenant testified that the Landlords were critical of her housekeeping abilities, and accused her of leaving cigarette butts and unbagged, soiled kitty litter outside of her suite. The Tenant testified that she told the Landlords that she does not smoke and that another tenant was responsible for leaving the kitty litter. The Tenant testified that the Landlords called her names and went into her mailbox without her permission.

The Tenant testified that there was no ventilation for her stove, and the Landlords were aware that the smoke alarms were set off easily, but did nothing to remedy the situation.

The Tenant stated that she felt in danger because the upstairs tenant had given keys to a friend, who was a coke addict. The Tenant stated that the upstairs tenant was also harassing her and calling her names. The Tenant advised the Landlords about the upstairs tenant's friend, but did not say anything about the verbal abuse from the upstairs tenant.

The Tenant's Witnesses are health care professionals, who testified that they had no first-hand knowledge of the Tenant's relationship with her Landlords. The Witnesses all gave testimony regarding the Tenant's state of mind during her tenancy. The Witnesses testified that the Tenant was feeling harassed and distraught and was complaining about her apartment. The Tenant's Witness BB testified that the Tenant perceived that her Landlords were overly involved and encroaching on her personal life. The Tenant's Witness BB testified that the Tenant told him her Landlords were coming into her apartment uninvited.

The Landlords testified that they gave appropriate written notice when they were going to inspect any of the apartments in the rental property. They testified that there were a couple of occasions where they gave the Tenant notice via phone, but that the Tenant gave them permission to attend her residence.

The Landlords testified that they did question the Tenant about water on the bathroom floor during one of the inspections, but that it was because they were concerned that the water was pooling behind the toilet as a result of a leak that they would have to repair.

The Landlords testified that they performed routine inspections on all of the suites in the building and provided dates of the inspections. They also provided 5 different dates at the end of the tenancy, when they required access to the Tenant's suite in order to show it to prospective tenants.

The Landlords denied calling the Tenant names and denied phoning the Tenant repeatedly. The Landlords stated that they phoned the Tenant once because another tenant had complained about the Tenant's ex-boyfriend hanging around the property. It

was subsequently discovered that the person was not the Tenant's ex-boyfriend, but the friend of a different tenant.

The Landlords testified that the Tenant had advised them about the upstairs tenant's friend, who she feared was a drug abuser. The Landlords spoke to the upstairs tenant about it, and the person moved out.

The Landlords testified that the Tenant was in the habit of burning toast, which set off the smoke alarms. As a result, the Tenant placed plastic and tape over the smoke detectors, which the Landlord asked the Tenant to remove. The Tenant kept replacing the tape and plastic, rendering the smoke detectors inoperable, which was a fire hazard.

The Landlords stated that, although the range hood fan was not ventilated to the outside, it was equipped with a charcoal filter which effectively removed smoke from the kitchen.

The Landlords testified that the Tenant's behaviour, in covering up the smoke alarms, had caused the Landlords to attend at the fire hall. The Tenant's behaviour resulted in a number of fire inspections which cost the Landlords money, and caused the Landlord to fear that the building could burn down.

Analysis

It is important to note that in a dispute such as this, the two parties and the testimony each puts forth do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the Tenant, has the onus of proving during these proceedings, that the damages and compensation being claimed is justified under the Act.

When the evidence consists of conflicting and disputed verbal testimony in the absence of independent evidence, then the party who bears the burden of proof is not likely to prevail. The Tenant's Witnesses had no first hand knowledge of the events and

circumstances surrounding this tenancy. The Landlords disputed all of the Tenant's claims and provided contradictory testimony.

Therefore, I find that the Tenant has not proven her claim for damages.

Conclusion

The Tenant's application is dismissed 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: October 15, 2009.
