



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI, MNDC, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the Residential tenancy Act (*Act*), regulation or tenancy agreement , to dispute an additional rent increase and to order the landlord to comply with the *Act*.

The tenants' agent served the landlord in person on August 05, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing. The tenant failed to provide the landlord with any of the additional evidence she submitted to the tenancy branch.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to compensation for loss of quiet enjoyment and if so how much?
- Can the landlord charge the tenant a rent increase?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?

Background and Evidence

This tenancy started on April 01, 2009. This is a basement suite and rent is \$900.00 per month due on the first of each month. The tenant paid a security deposit of \$200.00 on March 29, 2009. This is a month to month tenancy.

The tenant testifies that at the beginning of the tenancy there was herself, her partner and two children. Around the middle of May her partner moved out of the unit. Around July 15, 2009 a friend of the tenant came to stay to help her with the children. The tenant agrees that she did not tell the landlord that another adult was staying in the suite. The tenant testifies that the landlords told her they would put the rent up by \$200.00 per month if she had someone else living with her in the suite.

The tenant claims the landlords have complained about her and her visitors smoking on her patio as the smoke was drifting onto their balcony and into the neighbours' homes. The landlords asked her to smoke at the end of the driveway which she has done but found that it is difficult to do this with two small children so she has started to smoke on her patio again.

The tenant claims the landlords have withdrawn the usage of their daughters swing set. They accused the tenants' nephews of breaking it at her daughters' birthday party. She claims the landlord came down during the party and caused a scene in front of her guests about the children using the swing set.

The tenant claims the landlords harassment about parking, obtaining references for her roommate, use of the swing set, her children's toys, and her smoking have caused her undue stress and loss of quiet enjoyment of her home. The tenant also claims that the landlords have violated her privacy by taking photographs without her permission. The tenant alleges that the landlords have asked her not to have any sleepovers and that she must be home by 10.00pm each night. She is claiming \$3,000.00 from the landlords so she can move elsewhere.

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The tenants' witness testifies that the landlords have been verbally aggressive towards the tenant and her guests at her daughters' birthday party and made accusations that her son broke their swing set. The witness denies this damage was caused by her son and states that the landlords should not stop young children using the swing set as it is difficult to explain to them. The witness testifies that there was an incident with the landlord's dog fouling on the tenants door step. When the landlords were contacted they said they would 'get to it when they got to it'.

The landlords testify that since seeking information about the *Residential Tenancy Act* they now realize that they are not permitted to increase the rent at this time. However, they would still like to obtain references for the tenants roommate who the tenant refers to as her nanny. This adult is now living full time with the tenant and the landlords feel they should be able to obtain references from him.

The landlords testify that their garden and swing set was not part of the tenancy agreement and they had allowed the tenants small children to use it on occasion. Due to the safety issues of children using the swing and due to the damage they have withdrawn this offer and removed the swing.

The landlords testify that they were told at the beginning of the tenancy that neither tenant smoked. Soon after the tenants moved in they discovered that the tenant does smoke and this has caused problems due to the landlords' asthma. They asked the tenant to smoke away from the property as the smoke drifted onto their balcony when she smoked on her patio.

The landlord testifies that they have not harassed the tenant. They have dealt with the issue about the dog faeces as soon as they could and hosed the patio down that evening. The landlords state that they did not cause a scene at the tenants' daughters' birthday party but asked the guests to refrain from using the swing set. The landlord testifies that it was the tenants' guests who became augmentative with him. The landlords state that they have not been able to enjoy the use of their own garden and balcony due to the tenant and her guests who have made them feel uncomfortable in their own home. The landlord disputes the tenants testimony alleging that they have asked her not to have any sleepovers and that she must be

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home by 10.00pm each night. The landlords state that this was in connection with her male friend visiting for a prolonged period not in connection with her nieces and nephews' staying at the suite. The landlords state the tenant has no restrictions on what time she comes home at night.

The landlords dispute the tenants' testimony that they have violated her privacy and caused her a loss of quiet enjoyment. The landlords' claim they took photographs to use as evidence at today's hearing and have not harassed the tenant in any way. They feel they have lost the quiet enjoyment of their home due to the tenants' actions and accusations.

Analysis

I have carefully considered all the documentary evidence and submissions made by both parties during the hearing. I find that the tenant has failed to provide the landlord with her evidence as set out in the Residential Tenancy Branch Rules of Procedure rule 4.1. I find the tenant has not complied with the Act or Rules of procedure with regard to her documentary evidence and refuse to accept this evidence pursuant to rule 11.5(b). Therefore I have based my decision on the submissions made by the tenant during the hearing and the written and verbal submissions made by the landlords.

With regard to the tenants application to dispute an additional rent increase. The landlords have withdrawn this increase since seeking further information about rent increases from the Act. Therefore as no rent increase is required this section of the tenants claim is no longer valid.

With regard to the tenants' application for an order for the landlord to comply with the Act, regulation or tenancy agreement, I find no evidence that the landlord has not complied with the Act, regulations or tenancy agreement. I would caution the landlords to ensure a written formal tenancy agreement is in place for both tenants and direct them to the tenancy act for information on this matter.

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With regard to the tenants' application for a Monetary Order for compensation for loss of quiet enjoyment, section 28 of the Act states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the tenant has not provided sufficient evidence to support this section of her application. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. Both parties agree that the landlord's garden and swing set were not included in the tenancy agreement and therefore it was the good intentions of the landlords which allowed the tenant to have use of these areas. The landlords felt this was abused and were within their rights to withdraw this use.

After due consideration I find that The tenants misled the landlord at the beginning of the tenancy about one of the tenants smoking and as this affects the health of the landlord they have requested that the tenant does not smoke on the property. This is not an unreasonable request and the tenant must abide by the landlords wishes. I find that this does not form the basis of harassment. The landlord is within their rights to ask the tenant for references for her roommate. This has been asked repeatedly and not given. Again this does not form the basis of harassment. The tenant was given a parking space for her visitors to use and the landlord has

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provided photographic evidence that this space is being used. If the tenants guests use other spaces that are not allocated the landlords are within their rights to remind her about her allocated parking area therefore, this section of the tenants claim has no merit. I further find that the landlords have taken photographs of the tenants and her guest to use as evidence to support their dispute. A landlord has a right to defend themselves from allegations and have used the photographs in support of their dispute. This is not in violation of the tenants' privacy.

Conclusion

I find the tenants' application has no merit and her 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 01, 2009.

Dispute Resolution Officer