



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNR, ERP, RP, MNDC, OLC, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for loss under the *Act* and for the filing fee. The tenant also applied for an order seeking landlord's action to comply with the *Act* and to conduct emergency repairs. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, the tenant informed me that she planned to end the tenancy on January 31, 2010. Therefore, her application for an order seeking landlord's action was no longer necessary. The tenant did not pay a filing fee. Accordingly, her application to recover the fee was dismissed.

Therefore this hearing only dealt with the tenant's application for compensation in the amount of \$2,400.00 for the loss of quiet enjoyment

Issues to be decided

Has the tenant established a claim for compensation for loss of quiet enjoyment?

Background and Evidence

The tenancy started on November 01, 2008. The monthly rent is \$600.00 due on the first of each month. The rental unit is located in the basement of the home. The landlord occupies the upper floor. The landlord served the tenant with a notice to end tenancy for landlord use with an effective date of January 31, 2010. The tenant agreed to end the tenancy and accepted one month's rent as compensation.

The tenant testified that for the first ten months of the tenancy there were no problems between the two parties. However, after an altercation in August 2009 regarding a rent increase, the landlord's children started running around causing noise disturbances to the tenant below. The tenant also stated that the landlord himself comes home from work late at night and deliberately stomps on the floor. The tenant stated that she was disturbed about two to three nights a week but upon the advice of the police, she did not notify the landlord of the disturbance.

The tenant testified that the landlord also struck her boyfriend in the back of the head and threatened to kill him. The police attended the scene but no charges were laid.

The landlord denied all the allegations and stated that the tenant's boyfriend was not a temporary resident but had moved into the unit without the permission of the landlord. On one occasion, he was spotted entering the basement through a window.

The tenant is claiming \$2,400.00 as compensation for loss of quiet enjoyment.

Analysis

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

Section 6 of the *Residential Tenancy Policy Guideline*, also states that a landlord would normally be held responsible for a problem, if he was aware of a problem and failed to take reasonable steps to correct it.

In this case, the landlord was not notified of the noise disturbances that the tenant is claiming were deliberate on the part of the landlord. Therefore the landlord was not given an opportunity to rectify the situation.

Based on the documentary evidence and sworn testimony of both parties, find that the tenant has not proven her case for compensation for the loss of quiet enjoyment.

Conclusion:

The tenant's application is dismissed in its entirety.

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: January 11, 2010.

Dispute Resolution Officer