

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for compensation for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Tenant applied for compensation for damage or loss under the Act or tenancy agreement, for the return of her security deposit and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Are the Landlords entitled to a loss of rental income and if so, how much?
2. Is the Tenant entitled to compensation and if so, how much?
3. Is the Tenant entitled to the return of her security deposit?

Background and Evidence

This month to month tenancy started on June 28, 2009 and ended on July 24, 2009 when the Tenant moved out. Rent was \$875.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$437.50 at the beginning of the tenancy.

The rental unit is located below the Landlords' residence. The rental unit has an outdoor patio area, part of which is covered by the Landlords' deck. Tenant said that throughout the tenancy, the Landlords sprayed dog urine and feces off of their deck and onto her patio. The Tenant said she spoke to a guest of the Landlords' on the first day of the tenancy and asked them not to spray water because it was landing on many of her belongings (such as patio furniture, clothes hung out to dry and so forth). The Tenant also said that the Landlords sprayed off their deck approximately 10 times per day, every day that they were home. The Tenant claimed that she asked one of the Landlords on July 10, 2009 why he was washing off the deck so often and he advised her that he was spraying off dog urine. The Tenant said that when she asked the Landlords not to do this, they "verbally assaulted" her and told her to leave at the end of the month. The Tenant gave the Landlords written notice on July 11, 2009 that she was ending the tenancy.

The Tenant said that as a result of the frequent spraying, she was unable to use the patio during the tenancy. The Tenant also claimed that as a result of this practice, 4 days after the tenancy started she developed a severe rash on her face and chest, could not work because she was (is) a health care worker and suffered a loss of employment income for a one week period.

The Tenant also claimed that there was an unreasonable amount of noise coming from the Landlords' unit during the tenancy. In particular, the Tenant said the Landlords' hot tub operated from 8:00 am to 10:00 am and 8:00 pm to 10:00 pm and made a loud vibrating noise. The Tenant also said that the Landlords made a lot of noise throughout the night which made it difficult for herself and her son to sleep.

The Tenant said she was planning on residing in the rental unit for a couple of years but due to her concerns for her health and safety, she was forced to move and incurred moving expenses. Consequently, the Tenant sought to recover her moving expenses from the Landlords.

One of the Landlords admitted that their dogs may have had an occasional accident and urinated on their deck but claimed that any water he sprayed on the deck would not have gone onto the Tenant's patio area because there were only small gaps in the rails surrounding the deck and a 10 inch overhang off of their deck which contained a 5 inch gutter that would have collected any water. The Landlords also claimed that they were away from their residence for the period June 29 to July 5, 2009 when the Tenant claimed she got an infection. The Landlords denied that they sprayed any dog feces off of the deck.

The Landlords said that they advised the Tenant before she agreed to move in that the hot tub ran for 2 hours in the morning and 2 hours in the evening. The Landlords argued that the Tenant was at work most mornings when the hot tub was on in any event. The Landlords also denied that they made excessive noise, claimed that no other tenants had ever complained about noise coming from their suite and that in any event the Tenant never brought these matters to their attention. The Tenant admitted that she did not bring these noise issues to the Landlords' attention during the tenancy.

Analysis

The Landlords' claim(s):

The Landlords admitted that the rental unit was re-rented as of August 1, 2009 and that they did not lose any rental income for that month. In the circumstances, I find that there is no merit to the Landlords' claim(s) for a loss of rental income and they are dismissed. Furthermore, as there are no monetary damages or other reason for the Landlords to retain the Tenant's security deposit, that part of their claim is also dismissed as is their claim(s) to recover their filing fees for this proceeding.

The Tenant's Claim:

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date they receive the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security

deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

The Landlords admitted that they received the Tenant's forwarding address in writing on July 11, 2009 and that the tenancy ended on July 24, 2009. The Landlords also admitted that they did not have the Tenant's written authorization to keep the security deposit. Consequently, the Landlords had until August 8, 2009 to return the Tenant's security deposit or to file an application for dispute resolution to make a claim against the deposit. However, I find that the Landlords did not file their application to make a claim against the security deposit until January 6, 2010. Consequently, I find pursuant to s. 38(6) of the Act that the Landlords must return double the amount of the security deposit to the Tenant or **\$875.00**.

Section 32 of the Act says that a Landlord must maintain and provide residential property in a state of decoration and repair that complies with health, safety and housing standards required by law, and makes it suitable for occupation by a tenant.

Section 28 of the Act says (in part) that a tenant is entitled to quiet enjoyment including but not limited to the right to freedom from unreasonable disturbance and the use of common areas for reasonable and lawful purposes, free from significant interference. The Tenant argued that the Landlords frequently sprayed dog urine and feces off of their deck and onto her patio area below resulting in her loss of use of the patio and subsequent illness for which she claims she lost employment income.

Although the Landlords contradicted each other about whether dog urine was sprayed off their deck, I find on a balance of probabilities that it was from time to time. I do not accept the Landlords' argument that none of this water would have landed on the Tenant's patio area as it does not stand to reason. In particular, I find that the water pressure required to spray debris off a deck would likely have been strong enough to spray beyond a 10 inch overhang covering the Tenant's patio. However, I find that there is insufficient evidence to conclude that each time water landed on the Tenant's deck it contained dog waste. Furthermore, I find that there is insufficient evidence to conclude that the water that landed on the Tenant's patio caused or contributed to her illness during the first 5 days of her tenancy.

Even if I did find that there was a causal connection between the water sprayed on the Tenant's patio and her illness (which I do not), I find that there is no evidence of loss of employment income as the Tenant admitted that she was paid full sick benefits to cover that loss. Consequently, the Tenant's claim for a loss of employment income is dismissed.

However, I find that the Tenant's use and enjoyment of part of the deck (that was not covered) was affected by the Landlords' frequent watering. I further find that the Tenant brought this matter to the Landlords' attention on July 10, 2009 but that the Landlords failed or refused to do anything to remedy the situation and as a result, the Tenant is entitled to compensation in the amount **\$75.00**.

I find that the Tenant is not entitled to compensation due to an unreasonable amount of noise. Fairness requires that the Tenant must first bring these matters to the attention of the Landlords so they have an opportunity to address any problems. The Tenant admitted that she did not do so in this case. I also find that the Tenant is not entitled to compensation for moving expenses. Firstly, I find that there is insufficient evidence to conclude that the Tenant was forced to move by the Landlords. Secondly, the Tenant admitted that she would have had to incur approximately the same amount for moving expenses had she ended the tenancy under "normal circumstances." I find that the Tenant is entitled pursuant to s. 72 of the Act to recover the **\$50.00** filing fee she paid for this proceeding.

Conclusion

The Landlords' applications are dismissed without leave to reapply. A Monetary Order in the amount of **\$1,000.00** has been issued to the Tenant and a copy of the Order must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

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: March 03, 2010.

Dispute Resolution Officer