



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

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 and a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on April 09, 2010 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.

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 make submissions to me. The landlords' agent appeared but did not participate in the hearing. 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 a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both Parties agree that this tenancy started on August 01, 2009 and ended on March 31, 2010. Rent for this unit was \$1,650.00 per month and was due on the first of each month. The tenant paid a security deposit of \$825.00 which has been returned to her.

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The tenant testifies that she seeks the equivalent of two months' rent in compensation from the landlord for her loss of peace and quiet enjoyment of her rental unit and because the landlord failed to make repairs to the unit to protect the tenants health.

The tenant testifies that the tenant living downstairs continually disturbed the tenants' quiet enjoyment of her rental unit by causing loud noise late at night with music, screaming, yelling, swearing and banging doors. The tenant suspects this tenant damaged the tenants car, turned off the power to the tenants unit, smoked in her unit which filtered into the tenants unit and the tenant felt her safety was compromised by this tenants actions. The tenant states she asked the landlord to intervene but he failed to do so and instead sent this tenants mother a copy of an e-mail which the tenant had sent to him about her daughters behaviour. The tenant has since received e-mails from this person and feels her privacy has been violated.

The tenant states the landlord did not take the required steps to protect the tenants' health. She claims her health suffered from a lack of sleep due to the downstairs tenants' noise late at night and on weekends and with the mould issues in her own unit. The tenant states she was put on medication by her doctor and underwent tests at the hospital. She states she was told by a doctor that her ill health was caused through environmental factors. The tenant states she informed the landlord of repairs that were required to ensure her health was not compromised.

The tenant testifies that the landlord sent her an e-mail on March 02, 2010 giving her one months notice to end the tenancy and to vacate the unit on March 31, 2010. The tenant responded to the landlords e-mail to tell him to check with the Residential Tenancy Board to find out his responsibilities in ending a tenancy and discussed the required repairs. The landlord responded the same day concerning the repairs the tenant mentioned and to inform her that he had also given the other tenant notice to end tenancy as well. The landlord states in this e-mail that he requests the property to be vacant by the end of the month.

On March 05, 2010 the tenant e-mailed the landlord to inform him that he is legally bound to give her two months notice to end the tenancy. The tenant also raised issues about the other tenant she felt the landlord had not resolved and her continuing concerns about her health. The

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tenant goes on to explain to the landlord in the e-mail that it would not be feasible for her and her daughter to move at this time but she would endeavour to move out by the end of April, 2010.

The tenant states the landlord later rescinded the e-mail notice he had given to her but she now felt she had no choice but to move out and gave the landlord an e-mail notice to end tenancy effective on April 30, 2010.

The landlord testifies that each time the tenant informed him about repairs needed in the rental unit he took the necessary action. The landlord states he spent \$8,000.00 having the roof repaired and landscaping cost him an additional \$6,300.00. The landlord claims he was happy to spend this money as he believed the tenant would be a long term tenant.

The landlord testifies that problems started between this tenant and the downstairs tenant. In December, 2009 this tenant told him she would have to move out and the landlord told her that would be fine but she could not end the tenancy in the middle of the month. The landlord states the tenant agreed to talk to the downstairs tenant to try to resolve their issues herself. In February, 2010 the problems started again and the police were called. The landlord states that he then sent the tenant an e-mail stating if she could move out that would be great. The landlord states the tenant told him it was not a legal notice and March would not be a good time for her to move and she would need two months notice. The landlord states the tenant did not contact him so two days later he called her and told her to disregard the notice and that she could continue her tenancy.

The landlord claims that the tenant then gave him an e-mail stating she would be moving at the end of April.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 28(b) of the Act states that a tenant is entitled to quiet enjoyment including

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freedom from unreasonable disturbance; the tenant states her health was being compromised due to her lack of sleep because of the actions of the downstairs tenant and felt her actions also compromised her safety. The tenant has provided e-mail correspondence which confirms she felt intimidated by this tenant and these also confirm that the downstairs tenant would often turn off the power to this tenants unit. These e-mails also provide evidence that she requested the landlord to take action to prevent these disturbances from the downstairs tenant but he failed to do so until he gave the downstairs tenant notice to move out in March, 2010. Consequently it is my decision that the landlord failed to protect the tenants right to quiet enjoyment of her rental unit for a period of two months in 2010 and the tenant is entitled to compensation for this loss.

I have considered the tenants request for compensation for her ill health. In this instance I find the tenant has provided insufficient evidence to support her claim that her health suffered as a result of mould in her unit or the landlords' failure to carry out repairs. I find the landlord did respond to the tenants requests for repairs and there has been no evidence provided to show that there is mould growing in the tenants unit. The tenant has also provided no evidence such as a letter from her doctor which shows that a lack of sleep or a presence of mould contributed to her ill health.

With regards to the tenants claim for compensation due to having to move from the rental unit I find from the testimony presented at the hearing that both parties agree that the illegal one month notice the landlord gave the tenant was rescinded after the tenant explained to the landlord that it was an illegal notice. I also find that after rescinding this notice the landlord told the tenant that her tenancy could continue. Therefore, I find it was the tenants' choice to move from the rental unit after giving the landlord one months notice to end the tenancy and she must bear her own costs to move from the rental unit.

Due to the aforementioned I find the tenants claim for \$3,350.00 to be excessive and award her an amount for her loss of peace and quiet enjoyment to a sum of **\$1,000.00** pursuant to section 67 of the Act only. The remainder of the tenants claim for compensation is dismissed without leave to reapply.



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As the tenant has been partially successful with her claim I find she is entitled to recover the cost of filing her application of **\$50.00** pursuant to section 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,050.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: August 12, 2010.

Dispute Resolution Officer