Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the landlord – MNR, MNSD, FF

For the tenant – MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the landlord and one brought by the tenant. Both files were heard together. The landlord seeks a Monetary Order for unpaid rent and an Order to keep the tenants security deposit and to recover the filing fee. The tenant seeks double the return of the security deposit and to recover her filing fee.

Both Parties served the other Party by registered mail with a copy of their application and Notice of hearing. I find that both Parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing..

The landlord, the tenant and the tenants co tenant, acting as her agent, 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 tenant states that they had not served the landlord with their evidence package. The landlord stated that she did not require this and wanted the hearing to continue. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the tenant entitled to recover double her security deposit?

Background and Evidence

Both Parties agree that this tenancy started on February 01, 2010. The tenants paid a monthly rent of $2,200.00 which was due on the first of each month. The tenants paid a security deposit of $1,100.00 on January 15, 2010. This was a fixed term tenancy which was due to expire on June 30, 2010. The tenants gave the landlord their forwarding address in writing on May 21, 2010.

The landlord testifies that the tenants sent her an e-mail which stated that they ended their lease on May 01, 2010 and states the landlord is now free to re-rent their unit as it is their position that the lease was broken as of May 01, 2010. The landlord filed her application for Dispute Resolution on May 10, 2010.

The tenants state the tenancy ended on March 31, 2010, but do agree they did pay rent for April and sent this e-mail to the landlord stating that they broke the lease as of May 01, 2010.

The tenants agent testifies that they moved into the rental unit without viewing it and were not informed by the landlord that the neighbours' children practised the piano for six hours or more a day for seven days a week. The tenants claim that due to this extreme noise they lost their right to quiet enjoyment of their rental unit. The tenant states that the strata rules contain a clause which states that unreasonable noise is not allowed.

The tenants claim that on their first day of occupancy they asked the landlord to intervene with the neighbours on their behalf. The tenant agrees that the landlord did work with the members of the strata council to resolve this issue but failed to accept the compromise offered by the neighbouring tenants on March 31, 2010 that they would reduce their playing to three hours a day from 3.30 pm to 6.30 pm. The tenants state that strata council members visited their unit and agreed that the piano noise was of an unreasonable level.

The landlord testifies that she had lived in this unit with her own family for three years and although the piano playing could be heard it did not make the unit unliveable as suggested by

the tenants. The landlord states that as soon as the tenants notified her that there was a problem with the noise she acted accordingly to try to find a solution to the problem.

The landlord states that the strata bylaws also state that tenants who play the piano must do so between the hours of 10.00am and 9.00 pm and pianos must be placed against outside walls. The landlord states she worked hard in trying to reach an agreement with the neighbours and with the strata council members. She claims that on March 31, 2010 she would not accept the neighbours' agreement for three hour time limit on playing the piano as they had broken their agreements before and she wanted the matter settled by the strata council hearing which was scheduled to take place. The landlord states that once the council had made their decision it would be binding.

The landlord states the tenants decided they could not wait for this hearing to take place and she offered them the opportunity to sublet their unit and she started to re-advertise their unit for rent. The unit was re-rented to new tenants on June 01, 2010. At the council meeting a positive decision was made that the neighbouring tenants piano playing must be reduced to 2.5 hours a day.

The tenants testify that they had put up with this noise for two months and it was having a detrimental effect on their health. They decided to move from the rental unit as there were no guarantees that the strata council would rule in their favour.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; With regard to the landlords claim for unpaid rent I refer both parties to the Residential Tenancy Policy Guidelines #6; This discusses the tenants right to quiet enjoyment and states the tenants have a right to protection from unreasonable and ongoing noise. This section also discusses the issues when a tenant may be entitled to treat a tenancy as ended where a landlord was aware of circumstances that would make the premises uninhabitable for that tenant and withheld that information in establishing the tenancy.

The tenants argue that the landlord did not inform them of the piano noise before they rented the unit and failed to agree to a compromise reached between the tenants on March 31, 2010 that the children would reduce their piano practice time to three hours a day.

The landlord argues that the noise did not render the unit unlivable and she went to get lengths to resolve the noise concerns and the strata council ruled in her favor by restricting the amount of time the neighbors' children could practice the piano to 2.5 hours a day. I find the tenants did not view the suite prior to their tenancy and did not ask the landlord if there was any unreasonable noise in the suite prior to their tenancy.

However, I do find that as the landlord had lived in the rental unit for three years she would have been aware that the neighboring tenants' children did practice the piano for six hours a day, seven days a week and should have disclosed this information to the tenants before their tenancy commenced. While I accept that the landlord acted diligently to resolve this issue with the support of the strata council the problem could have been avoided if she had informed the tenants prior to their tenancy so they could have made an informed decision about renting the unit.

It is also my decision that the tenants moved from the rental unit without waiting for the decision of the strata council when they knew the council members who had visited their unit did find the noise levels to be unreasonable and would have been likely to find in favor of the landlord in reducing the times the children could practice piano. Consequently, I find that both parties must bear some responsibility for their dispute and I have reduced the landlords claim for unpaid rent for May, 2010 to the sum of $1,100.00.

With regard to the tenants claim for double the return of their security deposit I find from the e-mail sent to the landlord that the tenants did not consider their agreement to be at an end until May 01, 2010 and the landlord applied for dispute resolution on May 10, 2010 within the 15 days allowed under the Act. Consequently it is my decision that the tenants are not entitled to recover double their security deposit and their application is dismissed without leave to reapply.

Sections 38(4)(b), 67 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the landlord to keep the tenants' security deposit to compensate her for the loss of rent. As I have reduced the landlords claim to $1,100.00 and the tenants claim is also reduced to $1,100.00 I have offset one amount against the other and I Order the landlord to keep the tenants security deposit.

Both Parties have applied to recover their filing fees. It is my decision that as both Parties are partially at fault they must bear the cost of filing their own applications.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to keep the tenants security deposit of $1,100.00 to offset against the amount awarded to her.

The tenants claim for double the return of their security deposit 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: September 21, 2010.

Dispute Resolution Officer