



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR MNR FF
 MNDC FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the Act, sent via registered mail on September 22, 2010. The Tenant confirmed receipt of the Landlord's hearing documents.

Service of the hearing documents by the Tenant to the Landlord was done in accordance with section 89 of the Act, served personally to the resident building manager on June 10, 2010. The Landlord confirmed receipt of the Tenant's hearing package.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

- 1) Has the Landlord proven entitlement to an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*?
- 2) Has the Landlord proven entitlement to a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

- 3) Has the Tenant proven entitlement to a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord's Witness provided testimony that she was the president of an incorporated company which purchased the four strata units (units 1, 2, 3, 4) located on the main floor of the rental unit building at the end of February 2008. She confirmed that her company acquired permits and began to renovate these units as of October 2009 and was completed in March 2010. The renovation included among other things, the removal of two exterior concrete walls, removal of interior stairs, installation of a new HVAC system, new interior walls, and new flooring. She confirmed that a jack hammer was used to remove the concrete.

I heard undisputed testimony that the fixed term tenancy was effective on June 1, 2009 and switched to a month to month tenancy after May 31, 2010. Rent is payable on the first of each month in the amount of \$1,350.00 and the Tenant paid a security deposit of \$675.00 on June 22, 2009.

The Landlord testified and advised that the Tenant has paid his rent late on numerous occasions. When September 1, 2010 was not paid a 10 Day Notice to End Tenancy was served personally to the Tenant on September 2, 2010, at 10:40 p.m. The Landlord filed to seek an Order of Possession however he now wishes to withdraw his request because the Tenant paid September and October, 2010 rent in full on October 7, 2010. At this time the Landlord is only seeking a Monetary Order to recover the cost of the \$50.00 filing fee. He stated that the Tenant is welcome to stay on as a tenant if he agrees to pay his rent on the first of each month. The Tenant agreed.

The Tenant is seeking monetary compensation from the Landlord for loss of quiet enjoyment of his rental unit during the period the main floor of the building was being renovated. He stated that there was constant noise and the vibration from the hammer drilling and jack hammering was "brutal". He argued that the construction workers began work around 8:00 a.m. and often worked as late as 7:00 p.m. seven days a week. He confirmed that he is on the road a fair amount but that he slept at the rental unit.

The Landlord confirmed he knew at the time he sold the property that the new owners intended to renovate the area. He now owns the thirty rental units numbers 5 thru 34 with 10 units on each of the upper three floors. He stated that he informed his tenants that they were going to start renovations and that his resident manager would keep the

tenants informed of any information he had when they paid their rent. The Landlord stated that he was aware the new owners had acquired permits for construction but that he had no control over the scope of the work.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Landlord's application

The Landlord has re-established the tenancy and withdrawn his request for an Order of Possession. He has forgiven the late payment fees however is seeking recovery of the \$50.00 filing fee. Based on the evidence before me I find the Landlord suffered the loss of the filing fee as a result of the Tenant's failure to comply with section 26 of the Act which states that a tenant must pay rent when it is due in accordance with the tenancy agreement. Therefore I find the Landlord has proven the test for damage or loss and I approve his claim for \$50.00.

Tenant's application

The evidence supports that the Tenant is seeking compensation from his Landlord for loss of quiet enjoyment resulting from construction noise which was created when a company, other than the Landlord, renovated strata units not owned by the Landlord. Based on the aforementioned I find the Tenant has provided insufficient evidence to support that his loss was the result of the Landlord violating the Act, Regulation, or

tenancy agreement. Therefore the Tenant has not met the burden of proof as listed above and I hereby dismiss his claim.

Having dismissed the Tenant's claim I hereby decline to award recovery of the filing fee.

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$50.00**. The order must be served on the respondent Tenant 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: October 28, 2010.

Dispute Resolution Officer