

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the fixed term of tenancy was from September 19, 2009 to October 1, 2010. Rent in the amount of \$800.00 was payable in advance on the first day of each month. The parties agree that the tenant lived rent-free in the unit from September 19 to September 30, 2009. A security deposit of \$400.00 was collected on or about September 19, 2010.

By way of agreement reached between the parties, tenancy ended effective July 15, 2010. Rent was paid up to that date and, by way of mutual agreement, the landlords' retention of the security deposit was applied against rent for the period July 1 – 15, 2010. The total amount of rent paid for the period of the tenancy was therefore effectively \$7,600.00, which is calculated as follows:

\$2,400.00: October, November, December 2009 (3 x \$800.00);

\$4,800.00: January, February, March, April, May, June 2010 (6 x \$800.00);

\$400.00: July 1 – 15, 2010.

Compensation sought by the tenant in her application totals \$3,650.00. The tenant explained that this represents one half of all rent paid during the entire period of the tenancy, plus the filing fee ($\$7,200.00 \div 2$) + \$50.00. The manner of this calculation does not take into consideration the agreement between the parties concerning the security deposit, as above.

The subject rental unit is located in the basement of a house. The tenant alleges that her right to quiet enjoyment was breached as a result of frequent and ongoing noise from the family, including young children, living in the upstairs. The family moved into the upstairs early in October 2009 as a function of a house exchange with the landlords. The tenant claims that while the landlords occupied the upstairs during the period from September 19 to 30, 2009, she experienced no noise disturbance.

The tenant's concerns about noise were included in e-mail exchanges between the tenant and the landlord beginning in October 2009, and carried on intermittently during the ensuing months. The tenant's first indication to the landlords that she wished to end the tenancy as a result of noise occurred by way of e-mail in December 2009. At that time the tenant identified her wish to end the tenancy on or around March 1, 2010. Thereafter, as the tenant's personal circumstances changed, she informed the landlords of her wish to extend the tenancy beyond March 1, 2009. As earlier stated, tenancy ultimately ended effective July 15, 2010.

Analysis

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**, and provides in part, that a tenant is entitled to quiet enjoyment including, but not limited to, "freedom from unreasonable disturbance."

Residential Tenancy Policy Guideline # 6 speaks to "Right to Quiet Enjoyment," and includes in the definition of a breach of the covenant of quiet enjoyment, "unreasonable and ongoing noise." This guideline also provides as follows:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Based on the documentary evidence and testimony of the parties, I find that both parties shared a concern to find a resolution to the tenant's experience of disturbance from noises from upstairs. In large measure, these disturbances appear to have arisen from the normal daily activities of a young family. In light of the agreement between the landlords and the family upstairs to enter into a house exchange, the options available to the landlords for remedying the tenant's concerns were limited. Further, there was no way that either the landlords or the tenant could have fully appreciated the impact of these noises at the time when they entered into their tenancy agreement in mid September 2009, which was prior to the time when the family moved in upstairs.

I note the tenant's acknowledgement that in addition to the disturbance from upstairs, for a period of time during the tenancy she was also upset about personal matters pertinent to relationship and employment.

Having considered the documentary evidence and testimony of the parties, I find that the tenant has established entitlement to compensation in the amount of \$1,585.00, which is calculated as follows:

288: number of days in the tenancy from October 1, 2009 to July 15, 2010;

\$26.67: average daily rent (\$800.00 / month ÷ 30 days per month).

\$5.33: 20% of average daily rent (\$26.67 x 20%).

\$1,535.00 (\$5.33 x 288)

\$50.00: filing fee

Total: \$1,585.00

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$1,585.00**. Should it be necessary, this order may be served on the landlords, filed in the Small Claims Court and enforced as an order of that Court.

As the tenant's address as shown in her application is no longer current, the tenant is instructed to inform the landlords of her current mailing address.

DATE: October 6, 2010

Dispute Resolution Officer