



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, MNDC

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant made application for compensation for damage or loss under the Act and to cancel a notice ending tenancy for cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

The tenant confirmed that a notice ending tenancy has not been issued; therefore, that portion of her application was withdrawn.

At the start of the hearing the tenant's application was reviewed and the details of the monetary claim confirmed as outlined under the background and evidence portion of this decision.

Issue(s) to be Decided

Is the tenant entitled to compensation for damage or loss in the sum of \$13,000.00?

Background and Evidence

The tenancy commenced on May 22, 2009; a tenancy agreement was signed but neither party supplied a copy of the agreement or the signed park rules. The tenant pays \$244.00 per month pad rent, due on the first day of each month.

The tenant has made the following claim:

Return of rent	3,957.00
	13,000.00

The tenant and her witness testified that when they entered into their tenancy agreements they were told the park was adult only. The tenant stated that the park is not for adults only and that some of the younger occupants of the park have been causing repeated disturbances by having loud parties, fighting, drug use and drug dealing and have made threats against other occupants.

The tenant could not provide any detail as to when she has provided the landlord's agent with her complaints, but she did detail a number of incidents that have occurred over the past year that she finds frightening and disturbing. The tenant is afraid to walk in the park at night and believes the landlord's failure to provide an adult park where the rules are followed entitled her to return of rent paid and moving costs so that she may relocate to a quiet, safe park.

The tenant's witness provided a written statement that indicated tenants in units 6 and 4 have parties, fight and cause a disturbance to other occupants. The witness stated there is drug use occurring in open view and that day and night vehicles are coming and going from the park. The witness stated that others are frightened of retaliation should they make complaints.

The parties agreed during the hearing that there are park rules which prohibit loud talking, radio, and television, no outside speakers and no loud motorcycles or noisy cars. The parties agreed that the occupant who had a noisy motorcycle has moved. The landlord stated that motorcycles are legal.

The landlord responded that they have reported issues to the police and the landlord and tenants agreed that the issues with unit 4 have abated recently. The landlord stated that she has not been made aware of many of the complaints; that the park was an adult park until the rules were altered in 2005. The tenant signed park rules which did not include a declaration that the park was for adults only; however she submitted she was told by the agent that it was an adult park. The landlord stated that there are not constant disturbances and that at times when she goes away for a weekend there may be some people taking liberties.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that the tenant has failed to prove, on the balance of probabilities, that she has suffered a loss. I have based this upon the failure of the tenant to provide any details as to the reports made to the landlord of the disturbances reportedly caused, which would have given the landlord an opportunity to investigate and respond to those reports.

Section 7 of the Act requires an applicant to do what they can to minimize any claim that they are making. The tenant has claimed a refund of rent for a period of sixteen months, yet no evidence of any efforts made early in the tenancy to solve the issues reported was provided as evidence. The failure to seek a remedy early in the tenancy and to then request return of rent paid for the entire term of the tenancy forms a breach of the Act, in that the tenant has not attempted to minimize her claim.

I have found that the tenant has failed to establish damage or loss due to the absence of evidence supporting the claim. However, this does not mean that other occupants are not disturbing the tenant or causing a loss of quiet enjoyment to the tenant, only that the tenant has not taken steps to properly report the disturbances to the landlord's agent and to prove her claim today.

Both the tenant and her witness described events that they find unreasonable and disturbing. During the hearing I explained the right to quiet enjoyment to both parties and suggested that any concerns in relation to the loss of quiet enjoyment be placed in writing to the landlord so that those concerns may be properly investigated by the landlord. If a landlord fails to investigate reports of disturbances and later those disturbances are found to have caused a loss of quiet enjoyment, compensation could be due to the individuals who are affected.

I have enclosed a copy of the *Guide for Landlords and Tenants in British Columbia* for reference by both parties. The parties were also referred to the Residential Tenancy Branch (RTB) web site, which contains helpful information and forms; they were also made aware of the right to speak with RTB staff for information purposes.

In the absence of evidence supporting the monetary claim I find that the application is dismissed.

Conclusion

The tenant's application is dismissed.

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: November 24, 2010.

Dispute Resolution Officer