



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an application by the tenants seeking compensation for loss or damaged suffered under the *Act* due to an alleged breach of the *Act* by the landlord. The tenants also seek the return of their security deposit plus interest.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issue(s) to be Decided

Did the landlord breach the tenancy agreement, *Act* or regulations entitling the tenants to compensation?

Are the tenants entitled to the return of double their security deposit plus interest?

Background and Evidence

This tenancy began on approximately October 1, 1988 and ended sometime in June 2010. The most recent monthly rent was \$560.00. The tenants paid a security deposit of \$115.00 on October 1, 1988.

The tenants submit that they are entitled to the following compensation:

- \$2,000.00 due to diversion of power from their rental unit to the rental unit above them;
- \$3,000.00 due to loss of quiet enjoyment due to actions and behaviours of the occupants in the suite above them; and
- \$20,000.00 in punitive damages due to the landlord's failure to take steps under the *Act* to protect their quiet enjoyment.

The tenants submit that all the problems began in November 2008 when a new occupant moved into the unit above them. The tenants submit that the disturbances were so bad that the tenants eventually decided to give notice to end their tenancy. The tenants submit that there was constant noise, fighting, people coming and going at all hours and they also felt unsafe in their own home. The tenants felt that they were forced to vacate and alleged that the landlord put this occupant above them for the purpose of driving them out of the rental unit.

The tenants explained that they did not call the police because they were concerned that they would be evicted along with the other occupant based on a municipal bylaw. According to the tenants, if a property is found to be a 'crack house', then the entire property is shut down and they would have lost their home.

With respect to the loss related to diverted power the tenants submit that power was somehow used from their power source to run the refrigerator in the unit above them for the last 20 years.

The tenants state that they spoke with the landlord on a number of occasions about the circumstances but they did not feel the landlord ever took any measures to resolve the problem.

The tenants also seek the return of their security deposit plus interest. The tenants stated that they gave the landlord their forwarding address in writing on December 28, 2009. The copy of the note provided to the landlord is dated December 5, 2009.

The landlord responded by pointing out that each unit has its own power source and he does not understand why the tenants believe that power was diverted to the unit above. In addition, the tenants never informed the landlord of this possible issue at anytime so the landlord had no way to resolve the issue.

The landlord submits that the upper occupant was a tenant for 4 months and acknowledges that this individual was a problem. However, the landlord denies the tenants' claim that he stood idly by. The landlord submits that in that 4 months he attended the rental unit 4 times, issued 2 written warnings and served an eviction notice. According to the landlord, the upper occupant vacated shortly after the tenants.

The landlord stated that it is difficult to evict an occupant and he had to make sure that the eviction was with cause. He gave the upper occupant a couple of opportunities to correct the breaches but ultimately had to end the tenancy.

The landlord submits that the tenants did not provide their forwarding address in writing, but does acknowledge that he only offered to give a portion of the security deposit back due to damage caused to a window in the rental unit because the tenants did not return the keys.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. In this case the tenants bear the burden of proof.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the tenants have not established their monetary claim for \$25,000.00. The tenants have not provided sufficient evidence to demonstrate that the landlord breached the tenancy agreement or *Act* and the tenants have not provided any verification of their loss.

For example, with respect to the loss of \$2,000.00 related to the alleged diversion of power from their electrical to the upper unit the tenants did not provide sufficient evidence to demonstrate that this was actually occurring. The tenants themselves only speculated that this was the case. In addition, the tenants had no verification that their electrical costs were more or demonstrated any neglect or liability on the landlord's part resulting in them losing money due to higher electrical costs. Finally, the tenants failed to notify the landlord during the course of the tenancy of any potential problem and as a result provided the landlord with no chance to correct the issue, if it existed.

With respect to the loss of quiet enjoyment due to the disturbances caused by the occupant in the rental unit above the tenants, I accept the undisputed evidence that it was a bad situation. The landlord has acknowledged that the upper occupant was disruptive and as a result he proceeded to end that tenancy in accordance with the *Act*. I also accept that the tenants were significantly disturbed; however, I am not satisfied that the landlord is liable for any damage to the tenants. I find that the landlord took reasonable steps to correct the problem and ended that tenancy. The duration of that

situation was relatively brief and had the tenants not vacated the issue would have been resolved.

The landlord cannot normally be held responsible for the actions of the upper occupant unless the landlord fails to take steps to correct the situation. I am satisfied that the landlord took what steps were available to resolve the problem. While I accept that the tenants were significantly impacted by the situation, and as a result decided to end their tenancy, I do not find the landlord is liable to the tenants for \$23,000.00 in damages.

Regarding the tenant's security deposit I accept that one of the tenants gave the landlord a forwarding address in December 2009. Then, in January 2010 the landlord offered the tenants a portion of their security deposit which the tenants declined.

I find that the landlord failed to comply with section 38(1) of the *Act* which required the landlord to return the tenants' security deposit or file an application for Dispute Resolution to retain the security deposit within 15 days of receiving the forwarding address in writing. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

Having granted the tenants application, I also grant the tenants request to recover the filing fee paid for submitting this application from the landlord. I find that the tenants have established a total monetary claim for the sum of **\$357.04**. This sum is comprised of double the security deposit of \$115.00, accumulated interest of \$77.04 plus the \$50.00 filing fee.

Conclusion

I grant the tenant's application and have issued a monetary Order for the sum of **\$357.04**. This Order must be served upon the landlord. This Order may be filed with the Province of British Columbia Small Claims Court and enforced 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: December 21, 2010.

Dispute Resolution Officer