

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the Tenant's application for a Monetary Order for money owed or compensation for damage or loss under the Act and recovery of the filing fee.

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

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

As a preliminary matter, I note the Tenant did not supply any documentary evidence.

Issue(s) to be Decided

Has the Tenant established an entitlement to compensation from the Landlord?

Background and Evidence

I was provided with undisputed testimony as follows. The tenancy began May 1, 2010, monthly rent is \$4,500.00 and a security deposit of \$2,250.00 was paid prior to the tenancy.

The Tenant is seeking a monetary order for a 22% reduction of his rental obligation, since the tenancy began, from \$4,500.00 to \$3,500.00, and stated as cause the Landlord's alleged failure to correct deficiencies and provide services leading to a loss of quiet enjoyment and depriving him of the value of the rental unit.

The relevant testimony provided by the Tenant indicated that he was not given the parking space promised to him by the Landlord when he viewed the rental unit and that he did not have enough space to park his three vehicles.

I heard testimony from the Tenant that the HVAC system is not functioning properly and that the rental unit does not have an air conditioning system, but a heating system. The Tenant testified that there is a hole in the ceiling in the closet where the HVAC system is located. Further, according to the Tenant, the Landlord was to pay for heating as provided in the tenancy agreement, but that he is receiving two utility bills, one for heating and one for electricity.

The Tenant testified that there is only one heat control in the rental unit, which is located near the hot water system, making the temperatures too cold in some areas and too hot in others. The Tenant indicated he had to buy separate heaters for the bedrooms to have enough heat.

I heard testimony from the Tenant that there is a kitchen island in the rental unit where he works from home, which has been unusable due to an electrical outlet not functioning.

I heard testimony from the Tenant that there was no irrigating water system in the lawn, so that his vegetation, which provided privacy, began dying. The Tenant testified that this was not corrected until 2-3 weeks ago.

I heard testimony from the Tenant that the lighting in the guest bathroom, which was his principal bathroom, had inadequate lighting, with only one bulb, causing him not to be able to use the room as he required. The Tenant further stated that he was promised another bulb for the light fixture, but one was not provided. He further stated that he was unable to find a replacement himself as he was told it obviously was a European light fixture.

I heard testimony from the Tenant that the washer and dryer were placed in such a position that the exhaust fan comes on when the dryer is turned on. The Tenant testified that the fan runs around the clock and never shuts off, creating a noise disturbance.

I heard testimony from the Tenant that the exhaust fans in the bathroom are not functioning properly and was told by a contractor that the fan was too exotic for the stated purpose. The Tenant further testified that as he has never had use of the fans, his towels never dry out and there is a mould danger.

I heard testimony from the Tenant that he has suffered a loss of quiet enjoyment due to all the above stated reasons and due to the number of times the Landlord has had contractors and repair people come to the rental unit for these issues, only to not be able to fix the problem. The Tenant stated that the Landlord appeared not to send competent repair contractors who could correct the problems.

Included in the Landlord's relevant evidence was the tenancy agreement, an email from a contractor detailing final items attended to in the rental unit prior to occupancy, a move in inspection report, email exchanges between the parties and the contractor regarding the deck refinishing, issues regarding hours of contact between the parties, text messages between the parties concerning scheduling for the deck refinishing, an exchange between the parties with a listing of items the Tenant wanted addressed, emails from contractors, and invoices/receipts from contractors and home furnishings stores documenting the repair of issues the Tenant brought forth.

The Landlord provided relevant testimony that it was not his intent to have unhappy tenants and that he has spent a large amount of money having contractors attend the rental unit to address the issues of the Tenant. I heard testimony from the Landlord that the Tenant has caused him extra expense due to the Tenant's cancellation of scheduled work and still having to pay the contractors.

I heard testimony from the Landlord that the rental unit had over 22 electrical outlets, so that one non-functioning outlet would not lead to a loss of quiet enjoyment. However, the Landlord testified, he went to great expense to have the electricians out on a number of occasions to address the problem, but that it was not an easy system to fix.

I heard testimony from the Landlord that the irrigation system was a strata responsibility and that any lack of irrigation was due to a burst pipe, which the strata had to fix.

I heard testimony from the Landlord that he pointed out to the Tenant the parking space which he believed was associated with the rental unit, but prior to signing the lease, his partner physically took the Tenant to the actual parking space.

I heard testimony from the Landlord that he has addressed each problem complained of by the Tenant, but due to the Tenant's non cooperation on certain occasions in not allowing access, the problems took longer than anticipated and which caused the Landlord to incur additional expenses.

Analysis

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

The Tenant's Application for a partial return of rents paid, in the amount of \$1,000.00 per month since the tenancy began, relates to his claim for loss of quiet enjoyment and the rental unit not being worth the amount originally agreed.

The covenant of quiet enjoyment "promises that the tenant...shall enjoy the possession and use of the premises in peace and without disturbance." In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy. The Section 28 of the *Residential Tenancy Act* establishes rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy,
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Every tenancy agreement contains an implied covenant of quiet enjoyment. Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased..

Residential Policy Guideline 6, states:

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of: entering the rental premises frequently, or without notice or permission; persecution or intimidation; refusing the tenant access to parts of the rental premises; preventing the tenant from having guests without cause; intentionally removing or restricting services, or failing to pay bills so that services are cut off; forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or, allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

In this case, I find that, while these repairs caused the Tenant inconvenience, the repairs were minor and the inconvenience temporary, initiated each time at the Tenant's request. In considering the Tenant's right to quiet enjoyment versus the Landlord's obligation to repair, I find that the Landlord was responsive to the Tenant's requests for repair and sought diligently to resolve the issues with the Tenant, for which he was obligated. Therefore I find this does not constitute a basis for a breach of the covenant of quiet enjoyment.

In other instances, I find the Tenant failed to mitigate his alleged loss by not using another electrical outlet in the rental unit, other than the kitchen island, and by lack of cooperation in allowing the contractors into his rental unit. I find this caused the Landlord to incur additional expense.

There was disputed verbal testimony concerning the constant fan noise complained of by the Tenant; therefore due to insufficient proof, I find the Tenant failed to prove his loss.

I find the Tenant submitted insufficient proof with regard to his claims of paying two utilities, having to buy additional fans and of the hole in the ceiling closet; therefore I find the Tenant failed to prove his loss.

As I find the Tenant did not lose his quiet enjoyment of the rental unit and submitted insufficient proof of any other loss, I dismiss the Tenant's Application in its entirety.

As the Tenant's Application is dismissed, I decline to award the filing fee.

Conclusion

The Tenant's Application is dismissed.