



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: *MNDC, MNSD*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary claim against the landlord for compensation for loss of quiet enjoyment due to harassment and intimidation on the part of the building manager (CR) and for the return of the security deposit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the tenant established a claim for compensation for loss of quiet enjoyment? Is the tenant entitled to the return of the security deposit?

Background and Evidence

The tenancy agreement started on March 01, 2008 and ended on April 30, 2010. Prior to moving in the tenant paid a security deposit of \$475.00. The tenant provided the landlord with a forwarding mailing address on the day he moved out. The landlord agreed that the security deposit was not returned to the tenant nor had the landlord made application to retain all or a portion of the security deposit.

The tenant stated that during the tenancy, he was harassed and intimidated by the resident manager CR who also instigated other tenants to harass him. The tenant stated that in the summer of 2008, he made a request for the replacement of the water damaged flooring in the rental unit along with a list of other deficiencies that needed repair. The tenant stated that, because of this request, CR wanted to end the tenancy and therefore launched a campaign to evict the tenant.

The tenant alleged that CR was also in cahoots with two other tenants who displayed threatening and intimidating behaviour towards the tenant.

Sometime in the fall of 2009, the tenant left a rude note on the vehicle of another resident of the building (BMS) regarding the manner in which he had parked his vehicle. BMS responded with a rude note. Sometime later, the two met in the elevator and exchanged words. The landlord filed a statement from BMS in which he states that the tenant used foul language, spat on him and threatened to stab him. The police were called and the tenant was arrested. In a court proceeding, the tenant agreed to having caused fear of personal injury to a person and was ordered to have no contact with BMS.

The tenant stated that CR intimidated him in the street by glaring at him and walking towards him as if he was going to body check the tenant. The tenant also stated that CR intimidated his children who still suffer from nightmares of their father being attacked. The tenant stated that his vehicle was vandalized and he believes that it was the work of either CR or BMS. He also alleges that CR stole some of his personal belongings.

The tenant stated that all of the above intimidation and harassment was a plot on the part of the landlord to force the tenant out of the rental unit.

The landlord stated that the tenant got into an argument with BMS over the parking situation and this escalated into accusations of intimidation and harassment against BMS and CR. The landlord stated that the tenant was not harassed or intimidated by the resident manager, but he simply perceived it as such.

The tenant has applied for a monetary order in the amount of \$25,000.00 for loss of quiet enjoyment plus the return of his security deposit.

Analysis

Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. Every tenancy agreement contains an implied covenant of quiet enjoyment.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has 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.

In regard to the tenant's monetary claim for compensation for the loss of quiet enjoyment, I have reviewed the submissions of both parties and I find that the last few months of the tenancy were very stressful on both parties for different reasons. It is my determination that the parties found themselves in a situation which had progressively evolved and for which each had made some contribution to its unfolding. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support his claim of compensation for harassment and stress and therefore the tenant's claim for compensation is dismissed.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. Based on the sworn testimony of both parties, I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of the tenant moving out and providing him with a forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the security deposit.

The landlord currently holds a security deposit of \$475.00 and is obligated under section 38 to return double this amount plus the accrued interest of \$5.96. Accordingly the tenant has established a claim in the amount of 955.96.

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for **\$955.96**. This order may be filed in the Small Claims Court and enforced as an order of that Court

Conclusion

I grant the tenant a monetary order in the amount of **\$955.96**. The remainder of 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: January 27, 2011.

Residential Tenancy Branch