



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with two applications as follows:

By the tenant: as an application for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; and to recover the filing fee associated with this application.

By the landlord: as a cross application for a Monetary Order for damage to the unit and money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; and to recover the filing fee associated with his application.

Both parties attended the hearing and provided affirmed testimony. They presented oral evidence and confirmed receipt of the material they intended to submit at the hearing.

The landlord submitted 13 pages of evidence to the Residential Tenancy Branch less than five days before the hearing. The landlord stated that he did not have an opportunity to send that evidence to the tenant. I find that accepting this evidence would unduly prejudice the tenant. Therefore this portion of the landlord's evidence will not be considered.

The tenant submitted 23 pages of evidence one day late to the Residential Tenancy Branch, and the landlord confirmed receipt of that evidence. Since neither party would be unduly prejudiced I will consider that evidence in these proceedings.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Background and Evidence

The rental unit consists of the upper level of a single detached home. Pursuant to a written agreement, the month to month tenancy started on October 1st, 2007 and ended on August 29th, 2010, at a monthly rent of \$1218.00 payable on the first of each month. The tenant paid a security and pet damage deposit in the combined amount of \$881.25. Condition inspection reports were not completed at the start or the end of the tenancy.

The tenant testified that since the basement flooded in January 2009, contractors moved in and worked on the property for the next 6 months. The tenant stated that in addition to disruptions related to the repairs, the workers drank every night and significantly disturbed the tenant. He said that he could not sleep, and that the basement tenants were also fighting and drinking continually. He said that during that time, he lost the use of the shed because he felt his personal belongings were at risk, and that three dirt bikes went missing. The tenant claimed a loss of quiet enjoyment for 6 months at one third the monthly rent for the sum of \$2350.00.

The tenant stated that he had a verbal agreement to paint the rental unit during the tenancy. He said that he now feels the landlord took advantage of him and claims 60 hours of labour at a rate of \$25.00 per hour for the sum of \$1500.00.

The tenant provided a series of photographs to show “before and after” pictures of the unit.

The landlord argued that the basement was repaired in a matter of 6 weeks. He said that new tenants were shown the basement as early as April 12th, 2009. He said that he did not make noise or drink as alleged by the tenant, and that the tenant was never told that he could not use the shed.

The landlord testified that the tenant did not leave the unit in reasonable condition. He stated that some painting and cleaning were required, which amounted to \$541.06. The landlord provided 6 photographs showing a portion of the unit with holes in the walls, mouse droppings on the floor, and new laminate flooring being replaced in one of the rooms. The landlord also made a claim for the refund of \$400.00, which he paid the downstairs tenants on September 1st, 2009 for their loss of quiet enjoyment caused by this tenant's actions. He said that the tenant became abusive and intimidating, to the point where the downstairs tenants once called the police.

The tenant argued that the wall the landlord photographed was in that condition when he moved in. He pointed out that the landlord did not provide other photographs because the landlord agreed that he could paint the rest of the house. Regarding the loss of quiet enjoyment, the tenant stated that the landlord's allegations are exaggerated. He stated that he did have trouble with the downstairs tenants which resulted in a number of verbal confrontations.

Analysis

This tenancy started in October 2007 ended in August 2010. During that time, the parties made two applications for dispute resolution, which reflects the existence of animosity between the parties. Pursuant to the *Residential and Tenancy Act*, the landlord and the tenant bear a number of obligations towards one another. When a party fails to meet these obligations, or when an agreement cannot be reached, the parties can submit an application for dispute resolution and provide evidence in support of their claims.

In this matter, the tenant made non-specific allegations of loss of quiet enjoyment dating back to January 2009. If these incidents were so egregious and taxing on the tenant, the evidence would have been more convincing had the tenant made an application when they occurred. This brings to question the tenant's motive for his application and, with the passage of time, the accuracy of the incidents and their chronology. This notion also applies to the landlord. The tenant explained that he felt that the landlord took advantage of him. He did not explain why this realization did not strike him earlier, and does convince me that these matters could not have been addressed earlier.

Nevertheless, based on the available evidence I am satisfied that the tenant's right to quiet enjoyment was breached by a basement flood and the subsequent repairs. The landlord confirmed this incident occurred, that repairs were made, and only disagreed on the time it took for their completion and the alleged daily drinking. I find insufficient evidence to prove that the tenant's retroactive claim of loss of quiet enjoyment for a third of the rent for 6 months is justified. For this reason I award the tenant a nominal amount of \$200.00.

Concerning the tenant's work for the landlord, I find that whatever agreement he had with the landlord, it was not part of the tenancy agreement. The repairs were not an emergency, nor did they negatively impact the tenancy. The work performed was gratuitous; I find no evidence that the landlord breached the Act or the tenancy agreement and I dismiss this claim.

Turning to the landlord's claim: the parties are at complete odds regarding the condition of the unit before and the end of the tenancy. In the absence of condition inspection reports, I find insufficient evidence to prove that the tenant left the unit in a condition that was beyond reasonable wear and tear. Further, there was evidence that the tenant painted and did a certain amount of work to the unit. Therefore I dismiss this portion of the landlord's claim.

Concerning the refund for loss of quiet enjoyment, the parties' versions were again at complete odds. However the tenant did admit a part of the blame and I award the landlord half his claim for \$200.00.

Conclusion

Each party has established a claim of \$200.00 and as these entitlements offset each other, the issuance of a monetary order is not necessary.

Accordingly, I also dismiss the respective applications for the recovery of the filing fee.

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: February 11, 2011.

Residential Tenancy Branch