

DECISION

Dispute Codes: *MNDC, MNSD, FF.*

Introduction.

This hearing dealt with applications by the landlord and three tenants (MB, SS and SP), pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for the loss of income and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim. The landlord's claims were against two of the three tenants – SS and SP.

This hearing dealt with the applications of three tenants with various claims. The first tenant MB applied for a monetary order for compensation. The other two tenants SS and SP applied for monetary orders for compensation and for the return of their security deposits.

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

Issues to be decided

Is the landlord entitled to a monetary order for loss of income and the filing fee? Is the tenant MB entitled to compensation and the recovery of the filing fee? Are tenants SS and SP entitled to the return of their security deposits and the filing fee?

Background and Evidence

The rental unit consisted of a two level home with an unfinished basement. During the tenancy, the landlord had the basement finished and converted into a rental suite. The landlord entered into separate rental agreements with each of the three tenants. Each tenant had a bedroom and shared a common area which consisted of a kitchen and a living room. The top and main floors each have two bedrooms and a washroom. The common area is located on the main floor.

The backyard housed a shed and a garage. The shed was available for use by the tenants. The garage was converted to a hairdressing salon and was in operation prior to the start of the tenancies of MB, SS and SP. The electrical and water controls for the salon are located in the basement of the rental unit. The laundry is also located in the basement.

The tenancy agreements of all three tenants specifically state that the landlord will have full access to the basement and that the rent does not include laundry facilities. As a courtesy, the landlord allowed the tenants to use the laundry facility and to use a part of the basement for storage.

Landlord's application

The landlord stated that tenants SS and SP moved out without giving any notice and is therefore applying for the loss of income she incurred for the following month. The landlord is also applying to retain the security deposits against this claim.

Tenant MB

This tenancy began in November 2007 and ended on May 31, 2010. The monthly rent was \$400.00. The tenant rented a bedroom on the top floor and had the use of the common areas on the main floor. Despite the terms of the tenancy agreement, the landlord allowed the tenant to use the basement for storage and also to use the laundry facility located in the basement. MB is claiming a total of \$4,477.60 as compensation for the following:

Loss of quiet enjoyment - \$50.00 per month for the entire tenancy of 31 months

The tenant stated that the landlord entered the home without notice on a daily basis. She also harassed the tenant and ignored the safety of the tenants and their belongings by leaving the front door unlocked on two occasions. She also created an environment of anxiety due to lack of communication and landlord volatility.

The tenant stated that the landlord would enter the home and back yard several times a week to perform chores. He stated that the landlord entered his bedroom once for the purpose of cleaning the carpets. The tenant also stated that there was no lock on the door between the basement and main house and after several requests the landlord installed a latch type arrangement.

The landlord responded by stating that she entered the house for the purpose of cleaning and maintenance of the common areas only. She agreed that she entered the bedroom of the tenant once to steam clean the carpet. Prior to entering the bedroom, the landlord had informed the tenant of her intention to do so. The landlord stated that she visited once a month to collect rent and at other times to perform chores.

The landlord agreed that she installed a latch type arrangement after a suite was constructed in the basement. She also stated that her son occupied the basement for some time and used the upstairs washroom with the consent of the tenants.

Both parties agreed that the relationship between the occupant of the basement and the tenants was cordial.

The landlord stated that the tenants kept the key to the front door under a rock and often left the door unlocked. She denied having left the main door unlocked. Later during the hearing tenant SP also testified that the door could have been left unlocked by the tenant.

Loss of use of the house that was originally agreed upon - \$100 per month

The tenant stated that when the landlord's son moved in and after the installation of a suite in the basement, he lost the use of the storage space and the laundry facility. The landlord argued that allowing the tenant the use of the storage space and the laundry was a gratuitous gesture on her part and was not included in the rent. The landlord referred to the tenancy agreement that contains a term that indicates that the landlord has access to the basement and that the laundry was not included in the rent. The landlord also stated that the tenants were aware of the fact that the basement housed the utility services of the other tenant who operated a business out of the garage

Loss of quiet enjoyment due to construction - \$150 per month for seven months

The tenant stated that the landlord started construction without notice to the tenant. This went on for a period of seven months and the tenant suffered random losses of power and water without notice. The tenant agreed that the work went on during the day and did not contravene local by laws.

The landlord stated that she informed the tenants about the construction and advised them to relocate their belongings which they did. She stated that from the start of the tenancy, she had made the tenants aware that she intended to renovate the basement and install a suite. She also stated that the basement was not part of the rental area but she allowed the tenants to use the area as a courtesy.

Illegal rent increase \$14.80 per month for 12 months.

The tenant stated that the landlord served him a rent increase of \$50.00 effective two months after the notice was served. The tenant contacted the Residential Tenancy Branch and found out that the legislation allowed an increase of 3.7% with three months notice. Therefore, the tenant paid the monthly increase according to legislation, but was claiming it back because the landlord had initially served him with an increase that was not within the amount allowed by legislation.

Tenant SS

The claims of the landlord and SS were discussed at length. During the hearing the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute. Both parties decided to withdraw their claims against each other.

Tenant SP

SP moved into the rental unit on September 01, 2008 and moved out on May 27, 2010, without giving the landlord any notice to end tenancy. The monthly rent was \$400.00 per month due on the first of each month. The tenant had the use of a bedroom and shared the common areas. The rental agreement allowed the landlord access to the basement and indicated that it did not include the laundry facility.

SP started her testimony by stating that her monetary claim was in response to the landlord's application for a monetary order of \$400.00 for loss of income and to keep the security deposit in partial satisfaction of her claim.

The tenant stated that she felt intimidated by the landlord and therefore did not give her any notice to end the tenancy. The tenant stated that the landlord was difficult to talk to and constantly threatened to end the tenancy. The landlord stated that by moving out on May 27, 2010 without notice, the tenant caused the landlord to incur a loss of income for the following month.

SP applied for a total of \$3,150.00 as compensation for the following:

Loss of privacy, security and safety \$50.00 per month for 20 months.

The tenant stated that the landlord entered the home without notice on a daily basis. She also harassed the tenant and ignored the safety of the tenants and their belongings. She also created an environment of anxiety due to lack of communication and the aggressive behaviour on the part of the landlord. The tenant agreed that the landlord would enter the home and the back yard to perform chores.

In her written evidence, SP describes an incident that took place in July of 2009 when the landlord entered the home without notice and became irate when SP told her that she would be reporting the construction in the basement to the Tenancy Branch.

The landlord reiterated that she visited the rental unit to pick up the rent and to perform maintenance and cleaning chores around the house and backyard. She stated that she did not enter the private spaces of the tenants except for one time after notifying the tenant that she would be cleaning the carpets.

Loss of use of backyard \$50 per month for two months

The tenant stated that the landlord started work on the backyard and left it in an unusable state for two months. The tenant eventually stepped in and finished some of the work for a reduction in rent. The tenant is claiming compensation for the loss of use of the yard for two months. The landlord stated that the work started and had to stop when the ground froze. The tenant offered to finish the work in Spring and did so in return for a rent reduction for four months.

Loss of use of basement \$100.00 per month for ten months

The tenant stated that due to the construction work in the basement, she lost the use of this space. The landlord stated that the basement was not part of the living space in the rental unit and this was specifically indicted on the tenancy agreement.

Loss of quiet enjoyment due to construction of basement Seven months @\$150.00

The tenant stated that the landlord started construction without notice to the tenant. This went on for a period of seven months and the tenant suffered random losses of power and water without notice. The tenant agreed that the work went on during the day and did not contravene local by laws.

The landlord stated that she informed the tenants about the construction and advised them to relocate their belongings which they did. She stated that from the start of the tenancy, she had made the tenants aware that she intended to renovate the basement and install a suite. She also stated that the basement was not part of the rental area but she allowed the tenants to use the area as a courtesy.

Analysis

Landlord's application:

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I accept the landlord's evidence in respect of the claim. In this case the tenants SS and SP did not give the landlord adequate notice to end the tenancy, thereby causing the landlord to suffer a loss of income for the month of June 2010.

Accordingly, I find that the landlord is entitled to recover **\$400.00** from each of the tenants SS and SP. I find that the landlord is also entitled to retain the security deposit in partial satisfaction of her claim.

Tenant MB

Loss 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 determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

In a tenancy situation such as this where the tenants fit the definition of "tenants in common", it is not unreasonable for the landlord to access the areas of the home that the tenant does not have exclusive possession of.

Based on the testimony of all parties, I find that the landlord had full access to the basement and performed maintenance and cleaning chores in the common areas. I also find that the landlord entered the private space of the tenant once to clean the carpet but did so after informing the tenant of her intentions to do so.

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 the landlord entered the common areas without notice for the sole purpose of cleaning and maintenance and accordingly I find that the tenant has not proven his case for compensation for the loss of quiet enjoyment.

Loss of use of the house that was originally agreed upon

The landlord and tenant had different versions of the arrangement for the use of the basement. The tenant stated that he was granted full use of the basement for storage and laundry but was not able to provide any independent evidence to support this. His case is entirely dependent on his version of events, a version which is disputed by the landlord. The signed tenancy agreement indicates that the landlord retained access to the basement and that the rent did not include the use of the laundry facility located in the basement. Therefore I find that the basement did not form part of the rental area and the tenant's claim for loss of its use is dismissed.

Loss of quiet enjoyment due to construction

The construction in the basement went on in stages from March 2009 to October 2009. The tenant agreed that the timings did not contravene the local bylaws. However, he stated that the power supply and water were randomly shut off without notice.

I find that the tenant may have been inconvenienced while the electricity and water were unavailable, but temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. In addition, the basement did not form part of the rental area and the tenant did not apply for dispute resolution at the time of the alleged loss of quiet enjoyment, but chose to make application about 18 months after the start of construction and two months after the end of the tenancy. Accordingly, I find that the tenant has not proven his case for compensation for the loss of quiet enjoyment due to construction in the basement.

Illegal rent increase

The landlord served the tenant with a rent increase which was not in keeping with legislation. The tenant opted to pay the legislated amount after the appropriate wait period. Therefore I find that the tenant did not overpay rent and his claim for the return of the amount of the increase is dismissed.

Overall tenant MB has failed to prove his case for compensation and therefore must bear the cost of filing his own application.

Tenant SS

Pursuant to Section 63 of the *Residential Tenancy Act*, the dispute resolution officer may assist the parties settle their dispute and if the parties settle their dispute during the hearing, the settlement may be recorded in the form of a decision or an order.

During this hearing, the landlord and SS reached an agreement to settle these matters, on the following conditions:

1. The tenant agreed to withdraw her claim for compensation and the return of the security deposit. The tenant agreed to allow the landlord to retain the security deposit.
2. The landlord agreed to withdraw her claim for loss of income against the tenant and to keep the security deposit in full satisfaction of her claim.

The parties agreed that the above particulars comprise **full and final settlement** of all aspects of the dispute for both parties.

Tenant SP

Loss of privacy, security and safety

In a tenancy situation such as this where the tenants fit the definition of “tenants in common”, it is not unreasonable for the landlord to access the areas of the home that the tenant does not have exclusive possession of. Based on the testimony of all parties, I find that the landlord entered the common areas to perform maintenance and cleaning chores and did not invade the privacy of the tenants. SP admitted that the key to the house was placed under a rock and it was possible that the front door would sometimes be left unlocked by the tenants.

The tenancy was almost two years in duration and during the tenancy, the tenant had the opportunity to file for dispute resolution if she suffered a loss of privacy, security and safety. SP stated that this application was in response to the landlord’s application for loss of income. Therefore I find that SP has not proven her claim for loss of privacy, security and safety.

Loss of use of backyard

The landlord agreed that the work in the back yard stopped due to the ground being frozen for two months. I find that the tenant may have been inconvenienced while the yard was not available for use, but temporary inconvenience does not constitute a basis for compensation. In addition, the loss of use occurred during winter when outdoor activity is generally limited by the weather.

Based on the documentary evidence and sworn testimony of both parties, I find that the work in the backyard stopped due to circumstances that were beyond the control of the landlord and therefore I find that the tenant’s claim for compensation for loss of use of the backyard must be dismissed.

Loss of use of basement

The landlord and tenant had different versions of the arrangement for the use of the basement. The tenant stated that she was granted full use of the basement but was not able to provide any independent evidence to support this. Her case is entirely dependent on her version of events, a version which is disputed by the landlord.

The signed tenancy agreement indicates that the landlord retained access to the basement and that the rent did not include the use of the laundry facility located in the basement. Therefore I find that the basement did not form part of the rental area and the tenant’s claim for loss of its use is dismissed.

Loss of quiet enjoyment due to construction of basement

The construction in the basement went on in stages from March 2009 to October 2009. The tenant agreed that the timings did not contravene the local bylaws. However, she stated that the power supply and water were randomly shut off without notice.

I find that the tenant may have been inconvenienced while the electricity and water were unavailable, but temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. In addition, the basement did not form part of the rental area and the tenant did not apply for dispute resolution at the time of the alleged loss of quiet enjoyment, but chose to make application about 18 months after the start of construction and two months after the end of the tenancy. Accordingly, I find that the tenant has not proven her case for compensation for the loss of quiet enjoyment due to construction in the basement.

Conclusion

The landlord has established a claim for the loss of income against tenant SP. Since the landlord has proven her case, she is also entitled to the recovery of a portion of the filing fee. Overall the landlord has established a claim of \$425.00. I order that the landlord retain the security deposit of \$200.00 and accrued interest of \$1.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$224.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Tenant MB has failed to prove his claim and therefore his application for compensation is dismissed.

Tenant SS has settled her claim with the landlord.

Tenant SP must pay \$224.00 to the landlord. She has not proven the remainder of her claim and therefore her application for compensation 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: February 23, 2011.

Residential Tenancy Branch