



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application: *OPR, MNR, MNSD, FF*

Tenant's application: *CNR, MNDC, RPP, LRE, FF*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and for the filing fee. The landlord also applied for an order to retain the security deposit in partial satisfaction of her claim.

The tenant applied for an order to cancel the notice to end tenancy and for a monetary order for compensation for loss quiet enjoyment and for the filing fee. The tenant also applied for an order to set conditions or suspend the landlord's right to enter the rental unit and for the landlord to return the tenant's personal property.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. At the start of the hearing, the landlord stated that she would like to withdraw her application to retain the security deposit with leave to reapply at a later date, if necessary. Since the tenant is still in possession of the unit, I agreed to dismiss this portion of the landlord's application with leave to reapply.

The tenant stated that she will be moving out of the unit by 1:00 p.m. on June 30, 2011. Therefore the tenant withdrew her application to set aside the notice to end tenancy. Since the tenancy is ending, the tenant's application to set conditions or suspend the landlord's right to enter the rental unit is moot.

Accordingly this hearing only dealt with the landlord's application for a monetary order for rent and the filing fee and the tenant's application for compensation and the return of her personal property.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent and the filing fee? Is the tenant entitled to compensation?

Background and Evidence

This tenancy started on April 01, 2011. Rent is \$650.00 due on the first day of each month. The rental unit is located in the basement of the landlord's home. The landlord lives upstairs.

The landlord stated that she returned home after a camping trip on May 29, 2011. The next day she found an envelope stuck in her front door. The envelope contained a notice to end tenancy. On June 02, 2011, the landlord called the tenant about rent for June. The tenant advised her that rent was paid. The line went dead and the landlord called back, but the call went unanswered.

The tenant stated that she placed a draft in the name of the landlord in the amount of \$650.00 in an envelope and stuck it in the front door. The tenant stated that she had paid rent in the past this way without a problem.

The landlord stated that the tenant was advised not to place notices or envelopes tucked into the front door as this door faces the street and may not be safe. The landlord offered alternative suggestions of placing these items on the back door or inside the house to which the tenant had access.

The tenant was informed about unpaid rent on June 02, and she contacted the bank to resolve the issue. The tenant was advised that the landlord will have to file a notarized statement saying that she would not cash the draft if it came into her possession. The tenant stated that she had paid rent and did not have to follow up. The tenant filed photographs of the draft and the envelope tucked into the front door. The landlord stated that a photograph of the draft only indicated the tenant's intention to pay and not that she had received it. She also stated that there was no reason for her not to cash a draft if she had received one.

The tenant described in detail, the disturbances that she experienced during her tenancy. She stated that she could hear the landlord's guests using the washroom at night and having conversations late into the night. She also stated that on two nights in April, the landlord's son visited and because he drank a lot, she could hear him rolling in his bed and making several trips down the hallway to the kitchen and washroom. The tenant also stated that around Easter, the landlord had family who also caused similar disturbances through the night.

The tenant stated that she would also get woken up between 5 and 6 am on several mornings when the landlord and his son were preparing to leave on fishing trips. On two afternoons, the landlord played loud music.

The tenant is claiming \$1,300.00 as compensation for the loss of quiet enjoyment.

The landlord stated that she did have guests from time to time but they were mostly family. She agreed that she played loud music but it was during the day and on two occasions only, when her sister was visiting. The landlord also stated that she starts work at 7am and therefore will be awake and moving around prior to that time.

The tenant also stated that she had her personal property stored inside a shed and the landlord had changed the lock. The landlord explained that the key to the original lock was misplaced and therefore she changed the lock. At the time of the hearing, the key was found and the original lock was back on. The tenant agreed that she had a key to it.

The tenant stated that someone entered her suite when she was away but was not sure who it was. She also stated that there was nothing missing from her suite. The landlord informed her that he had entered on one occasion to check for water damage from power washing the outside areas of the suite.

The tenant stated that the landlord threatened her with eviction as she had a friend who was a police officer. The landlord agreed that she had a friend who is a police officer, but she stated that she did not threaten the tenant.

Analysis

Based on the sworn testimony of the both parties, I accept the landlord's evidence in respect of the claim. I find that the tenant had intention to pay rent, purchased a bank draft in the amount of the rent and stuck it in the front door. Unfortunately, the landlord did not receive it and if she had, she would have no reason not to cash it. She would also not have gone through the process of making application for unpaid rent. Based on a balance of probabilities, it is more likely than not that the landlord did not receive rent and therefore the tenant owes the landlord \$650.00 for June 2011.

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.

The tenant's testimony consisted of noise disturbances associated with normal every day activities. The landlord leaves home for work at 7am and therefore noise disturbances caused by movements on the upper floor are not unexpected.

Tenants renting a basement unit are required to accept the fact that they will hear noises from the upstairs. The additional noises that the tenant testified about were from the visitors of the landlord who were primarily family members getting together for a fishing trip or for Easter. I find that the tenant has not proven that the noise disturbances were ongoing and deliberate on the part of the landlord.

I find that the tenant may have been inconvenienced while the landlord had family over but temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Accordingly, I find that the tenant has not proven her case for compensation for the loss of quiet enjoyment and therefore her application is dismissed without leave to reapply. The tenant must also bear the cost of filing her application.

I find that the landlord has established a claim of \$650.00 for unpaid rent. Since the landlord has proven her case, she is also entitled to the recovery of the filing fee of \$50.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the total amount of \$700.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$700.00**.

The tenant's application is dismissed in its entirety.

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: June 28, 2011.

Residential Tenancy Branch