

DECISION

Dispute Codes: Landlord: MNDC and FF
 Tenants: MNDC and FF

Introduction

These applications were brought by both the landlord and the tenants.

By application of August 17, 2011, the landlord sought a Monetary Order for damages totalling \$10,519.31 consequent to ongoing conflicts between the applicant tenant and tenants in the rental unit upstairs from the applicants.

By prior application of July 4, 2011, the tenants sought a Monetary Order for \$4,862.99 floss of quiet enjoyment of the rental unit on the grounds that the landlord failed to take remedial action to resolve conflicts between them and the other tenants.

Bother parties seek to recover their filing fee for this proceeding from the other.

Issues to be Decided

This dispute requires a decision only on whether either party is entitled to a Monetary Order for the claims submitted.

Background and Evidence

This tenancy began on June 1, 2009 and ended on May 31, 2011. Rent was \$1,100 per month plus 40 per cent of utilities and the landlord held a security deposit of \$550 paid on or about June 1, 2009.

This dispute arose over a conflict between the applicant tenants and three sets of upstairs tenants. In the most recent matter, the applicant tenants make claim that they were forced to move as a result the upstairs tenants' child practicing on the piano and consequent confrontations with the male upstairs tenant.

While the landlord gave evidence that the tenants had given him verbal notice on or about March 1, 2011 that they would be vacating on March 31, 2011, they subsequently had a change of mind and gave written notice on April 21, 2011 that they would be leaving the tenancy on May 31, 2011.

The male tenant also submitted medical evidence that he had had a heart attack and surgery in August of 2010 and subsequently suffered from depression.

He stated that matters came to a head on March 12, 2011 when having heard banging from the upstairs suite, he banged on the wall or ceiling in response. He stated that there followed a confrontation with the upstairs tenant at his door and police attended.

The landlord stated that he was largely unaware of the conflict as some two years earlier, after the applicant tenant had used profanity with him, he had communicated only with the female tenant in writing at her request.

He stated that, to the best of his knowledge, the tenants had gotten on well for the first 21 months of the tenancy and the issue of piano practice disturbing the tenant did not come up until the end of the tenancy.

In late April 2011, in an exchange on the matter with a local by-law enforcement official, the tenant initially asked the official not to communicate with the landlord on his behalf.

The tenant had subsequently authorized the official to approach the landlord on his behalf and the official propose a meeting of the parties, an initiative to which the landlord had responded affirmatively, but it did not materialize as the upstairs tenant had not been available at proposed times.

.The tenants have made the following monetary claims:

Return of rent paid for March 13 to May 31, 2011	\$2,823.00
One additional month's rent	1,100.00
Moving expenses	256.80

Meal expenses	132.19
One- half month's rent	550.00
Filing fee	<u>50.00</u>
TOTAL	\$4,861.99

The landlord gave evidence that he had lost very good upstairs tenants shortly after the subject tenants moved in because of a conflict over use of the laundry room for storage and the fact that the male tenant had posted a "no religious mail" sign which offended the upstairs tenants who valued such. The landlord subsequently offered to construct a storage shed and to install carpeting to dampen noise, both offers of which were declined by the subject tenant.

The landlord stated that he had been forced to install a separate laundry room for the upstairs tenants to avoid future conflicts.

A second tenant moved in but left on the first day after the subject tenant had told her he could play rock and roll music until 11 p.m.

According to the landlord, the third tenants almost moved out immediately also after they witnessed the subject tenant shout at the landlord

The landlord has made the following monetary claims.

Loss of rent for August 1 to September 30, 2009	\$3,700.00
Reduced rent for 22 months for \$200 rent reduction for 1 st to 3 rd tenants	4,400.00
Cost to build separate laundry room	1,930.81
Keyless garage door opener	50.00
Advertising for new tenants	338.10
Filing fee	<u>100.00</u>
TOTAL	\$10,518.91

Analysis

With respect to the tenants' application, due to the unfortunate coincidence of ill health and conflict with the upstairs tenants, clearly the tenancy was not a happy one, particularly toward its conclusion.

Section 28 of the *Act* provides that every tenant has a right to quiet enjoyment of the rental unit.

However, in order to qualify for an award for loss of quiet enjoyment, the tenants would have to prove that actions by the landlord himself diminished or destroyed their quiet enjoyment or that the landlord knowingly stood idly by while other others under his control inflicted the damage. The tenant has submitted no written evidence to contradict the landlord's assertion that for 21 months, he had no idea of the tenants' discontent.

Moreover, I do not find a degree of negligence on the part of the landlord that would warrant an award. In the early instances, the landlord offered to build the storage shed to minimize conflict and install carpets for sound dampening and, in fact, built separate laundry facilities for the same purpose.

The landlord attended the rental unit on both March 12 and 13, 2011, but was reasonable in relying on the applicant tenants stated intention to move out of the rental unit in determining whether some initiative was in order.

Therefore, I must dismiss the tenants' application in its entirety.

As to the landlord's application, I find the loss of rent claims to be invalidated by the passage of time, specifically because it is simply unreasonable to accept that a landlord would have continued a tenancy with tenants who he believed in good faith were solely and totally responsible for his having lost \$8,100 in loss of rent and reduced rent.

I find that the claim for the laundry room cannot be upheld as it has, in all probability, increased the value of the rental property to the benefit of the landlord and was an initiative of the landlord's choosing.

Similarly, the keyless door entry and advertising claims are simply too far removed from the subject of the present hearing to be applicable.

Therefore, I must dismiss the landlord's application in its entirety.

Conclusion

Both applications are dismissed without leave to reapply and the parties remain responsible for their own filing fees.

September 6, 2011