



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC; FF; O

Introduction

This is the Tenant's application for compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony at the Hearing.

The Tenant testified that she had hand delivered the Notice of Hearing documents and copies of her documentary evidence to the male Landlord, on September 2, 2011. She testified that she had taped her second package of evidence to the Landlords' door, on September 23, 2011. The Landlord testified that he received the Notice of Hearing documents and the Tenant's documentary evidence on September 23, 2011, taped to his door.

Section 89 of the Act determines the method of service for documents related to a dispute resolution proceeding. The Tenant has applied for a Monetary Order which requires that she serve each respondent as set out under section 89(1). In this case, I find that the Tenant did not serve the female Landlord with the Notice of Hearing documents and therefore the Tenant's application against the female Landlord is dismissed.

Based on the testimony provided, I am satisfied that the male Landlord was sufficiently served with the Notice of Hearing documents and copies of the Tenant's documentary evidence, pursuant to the provisions of Section 71(2)(c) of the Act.

The Landlord testified that he served the Tenant with copies of his documentary evidence by taping the documents to the Tenant's door on September 21, 2011. The Tenant acknowledged receipt of the Landlord's documentary evidence.

Issues to be Decided

- Is the Tenant entitled to a monetary award for loss of peaceful enjoyment of the rental unit?

Background and Evidence

The rental unit is the top floor of a house. The Tenant testified that she moved out of the rental unit on September 9, 2011, pursuant to a Notice to End tenancy issued September 1, 2011, for unpaid rent. The Tenant testified that she paid the rent on September 1, 2011, by attaching the rent cheque to the Landlord's door. The Landlord testified that the rent was not paid until September 2, 2011.

The Tenant seeks a monetary award in the amount of \$4,170.00 (the equivalent of three months' rent) for loss of quiet enjoyment for the months of June, July and August, 2011. She also seeks a monetary award in the amount of \$3,600.00 for lost wages. The Tenant testified that she calculates she lost the equivalent of one week's work documenting the noise and writing letters. The Tenant testified that there was a ground floor suite immediately underneath the rental unit and that the Landlord began renovating the ground floor suite in March, 2011. She stated that there was construction noise on the weekends and 3 or 4 days during the work week until 9:00 of 10:00 p.m. The Tenant testified that this noise included skill saws, hammering, loud radio playing and cutting out joists. She testified that there was constant noise when she was home and that workmen parked in her parking spot. She stated that when she complained in writing to the Landlord, she was threatened with eviction and told she could not park in her parking spot.

The Landlord testified that he started the renovations in May, 2011. He stated that the renovations were mostly cosmetic and that he certainly did not remove any floor joists. The Landlord stated that he did most of the work himself and that any workmen who were on site were careful not to disturb the Tenant or the neighbours and did not work in the evenings. The Landlord provided four written statements including two from workmen, one from a neighbour who lives immediately next to the rental property, and one from the neighbour's landlord, who owns the neighbouring house. The Landlord testified that he told the Tenant she could not park on the rental property until she got her car fixed because it was leaking fluid.

The Tenant submitted that the statements should be given no weight because two of them were from employees of the Landlord and therefore not independent statements. With respect to the statements from the neighbours, she submitted that they did not live in the rental property and therefore could not know how loud the construction noise was.

Analysis

The Tenant submitted that she moved out because of the Notice to End Tenancy issued September 1, 2011. Section 46(4) of the Act provides that if a tenant pays the overdue rent within 5 days of receiving a Notice to End Tenancy for Unpaid Rent, the Notice has no effect. In other words, the Tenant was not required to move out of the rental unit. In

this case, the Tenant paid the rent within the required time, but decided to move out in any event.

This is the Tenant's application and therefore the onus is on the Tenant to prove her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Landlord pay for the loss requires the Tenant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act, regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenant did not provide sufficient evidence to support her claim. She did not provide written statements, or witnesses, to support her allegations. The Landlord provided written statements from four people, two of whom were independent witnesses. The statement from the Tenant's neighbour states, in part:

"During the time of renovation there were the regular sounds of construction during the day. None of it excessive. During the evenings construction was shut down and all sounds of construction stopped."

(reproduced as written)

The Tenant's neighbour's landlord writes, in part:

"I have been frequently at the location over the last several months for various reasons. During all this time, I have never heard any construction or other disruptive noise coming from [the rental property]. There has definitely been some activity going on as there have been one or sometimes two people going in and out the downstairs, however, no noise has ever come across the fence.

I have also checked with my tenants who are around the house most of the day (as one works from home and is often in the backyard) and they have also confirmed this point of view."

(reproduced as written)

Based on the foregoing, I find that the Tenant has not satisfied the first element of the test for damages and therefore her application is dismissed in its entirety.

Conclusion

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: October 17, 2011.

Residential Tenancy Branch