

DECISION

Dispute Codes MNDC, FF

Introduction

This is an application filed by the Tenant for a monetary order for compensation for loss of quiet enjoyment and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

At the beginning of the hearing it was clarified by both parties that the Tenant's late evidence submitted November 14, 2011 and a video on a compact disc submitted November 15, 2011 is a contravention of the Residential Tenancy Branch's Rules of Procedure for evidence and shall not be considered as it may prejudice the respondent. The Landlord stated in direct testimony that no evidence has been submitted for the Landlord. The hearing shall proceed with the direct testimony of both parties and the original evidence package submitted with the notice of hearing package which the Landlord has confirmed receiving. The Tenant has also filed an evidence package dated received on August 23, 2011 which the Landlord has received.

Both parties agreed during the hearing to mutually end the tenancy on February 28, 2011 at 1:00 p.m. and that the Landlord shall receive an order of possession for this date.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

Both parties agree that this tenancy began on June 13, 2011 on a month to month basis as shown in the submitted copy of the signed tenancy agreement. The monthly rent is \$875.00 payable on the 1st of each month and a \$437.50 security deposit was paid at the beginning of the tenancy.

The Tenant is claiming a loss of quiet enjoyment and is seeking \$1,742.80 (which is 80% of the rent (\$2,178.50) costs from June 13, 2011 to August 19, 2011). The Tenant claims that approximately 2 weeks after the tenancy began that the Tenant lost the use

of the front yard and the Landlord was invading her privacy in the backyard. The Tenant states that the Landlord was away approximately 20% of that time on a camping trip. The Tenant states that during this time, the Landlord entered the rental unit without permission or notice during a dinner party. The Tenant states that the door was closed but not locked. The Landlord disputes this. The Tenant states that she spoke to the Landlord about this incident and that nothing further has occurred. The Tenant also states that she lost the use of the front yard because the Landlord stated that it was their property. The Landlord disputes this stating that he only told them to keep the children and their toys off their side of the property (a duplex rancher) which is side by side with the Landlord's home. The Tenant also states that on August 17, 2011 at approximately 1:40 a.m. the Landlords were holding a party with excessive noise. The Landlord states that this was during the summer and only occurred the one time, which has never been repeated.

Analysis

As both parties have attended the hearing, I am satisfied that the Landlord was properly served with the notice of hearing package which included the Tenant's attached details of dispute. The Landlord has also confirmed that he is in receipt of one evidence package received in August of 2011 which contains a copy of the tenancy agreement, four hand written receipts for rent and four photographs of the exterior of the property.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the Tenant must prove her claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. When questioned about each other's oral testimony, both parties would offer a version of the event. In addition, with no documentary evidence to support their claim, I'm left with just their oral testimony. I found both parties to be contradictory in their evidence and unreliable. I find on a balance of probabilities that the Tenant has failed in her claim for a monetary order. The Tenant's application is dismissed.

By mutual agreement to end the tenancy on February 28, 2011 at 1:00 p.m., the Landlord shall receive an order of possession effective on this date.

Conclusion

The Tenant's application is dismissed.
The Landlord is granted an order of possession.

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: November 23, 2011.

Residential Tenancy Branch