



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72; and
- other unspecified outcomes that were not expanded upon at the hearing.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence, to make submissions and to cross-examine one another. The landlord's counsel testified that on November 8, 2011 the tenants received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on November 7, 2011. I am satisfied that the tenant served this package in accordance with the *Act*. I am also satisfied that the parties exchanged their evidence packages with one another in accordance with the *Act*.

The landlords' interests in this matter were represented by their legal counsel who also assisted with translating questions and their testimony when necessary, as neither landlord is fluent in the English language.

At the commencement of the hearing, the landlord's counsel (counsel) confirmed with the male landlord that his first name is spelled as it appears above. The tenant agreed to revise the spelling of the male landlord's first name in his application to the corrected spelling as it appears above.

During the hearing, the tenant referred to a document package that he said he had received from his lawyer within the week prior to this hearing. He said that he did not submit this information into written evidence nor did he send a copy to the landlords as it was too late to do so when he obtained this evidence. I noted that this tenancy ended in October 2010 and the tenant applied for dispute resolution seeking this monetary award on November 7, 2011. Under these circumstances and as the tenant has had ample time to compile and enter into written evidence anything that he considered

relevant regarding his application, I proceeded to hear this matter without giving consideration to the tenant's new evidence that he had not submitted to either the Residential Tenancy Branch (RTB) or the landlords.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to recover his filing fee for his application from the landlord?

Background and Evidence

Based on the best evidence before me, this periodic tenancy apparently commenced on May 1, 2008 for the rental of an entire two- level house. Monthly rent at the commencement of this tenancy for the entire property was set at \$1,200.00, payable in advance on the first of each month. The male landlord submitted a sworn affidavit that the tenant paid the initial month's rent of \$1,200 for May 2008, but did not pay the required \$600.00 security deposit.

The male landlord's sworn affidavit of January 17, 2012 described the events which transpired in June 2008 which led to the tenant taking occupancy of only three rooms in the basement of this rental property as follows.

...then in June, 2008, he advised us that he had lost his employment as a longshoreman and was waiting for social assistance and could not afford to rent the whole house and that he had no other place to go to and he wanted to use a portion of the basement area for a short period until he found other housing...

3. That I was extremely reluctant to rent him a portion of the basement as it was not set up as a separate suite and it was not my intention to rent it however he pleaded with me and offered \$375 for use and occupation. He refused to move so I acceded. There was no written rental agreement initially and the area to be used was a very limited portion of the basement..the kitchenette, dining room and the area marked E's (the tenant's) bedroom.

4. That E started to complain that he could not afford the place and we invited him to leave however he refused to do and was representing to the other upstairs tenants that he was the manager and/or owner of the house...

The tenant disputed the landlord's account of what transpired at the commencement of this tenancy. The tenant and his daughter, GDG who gave sworn testimony at this hearing, said the tenant had made payments of \$1,200.00 in monthly rent. The tenant said that he had receipts dating as far back as September 1, 2006. However, he provided no written evidence to support his claim that he was paying full rent for this property for many more months than was stated in the male landlord's affidavit and evidence package. The tenant did confirm that at some point the landlords agreed to let

him pay whatever he could of the \$500.00 monthly rent that was set for his basement rental unit. By that time, he was living in the basement.

Although the tenant said that he vacated the rental premises on September 18, 2010, the tenant entered into written evidence a copy of two 1 Month Notices to End Tenancy for Cause (the 1 Month Notices) dated September 9 and September 20, 2010 and a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) issued on October 4, 2010. The landlord's counsel also referenced two other applications for dispute resolution that were submitted in 2010 at the time the tenancy was ending. As the landlord applied for an end to this tenancy and an Order of Possession on October 14, 2010, the landlord was uncertain if the tenant had actually vacated the rental unit by that time. By the time applications from both the tenant and the landlord were heard by the RTB on October 20, 2010, the tenant had vacated the rental unit. Both applications were withdrawn at the dispute resolution hearing scheduled that date.

The tenant applied for a monetary award of \$25,000.00. He did not provide any itemized breakdown for his claim, only noting that this was for his loss of his quiet enjoyment of the rental premises and for prolonged aggravated damages for 20 months, 8 hours per day. Although his written evidence was unclear on many points, I was able to determine from his written evidence and from his oral testimony that the primary source of his claim derived from the landlords' failure to address the noise complaints that he lodged about the other tenants in this rental property who lived above him.

I heard oral testimony from his ex-wife who lived in the upper rental unit of this property for a two-month period and who was familiar with the tenant's noise complaints. She said that he was exposed to "lots of noise" during this tenancy, but was uncertain if he had ever requested a rent reduction during his tenancy due to the noise. I also heard oral testimony from the tenant's daughter, GDG, who was present noise was originating in the upper level of this rental property. She testified that the male landlord only said that he was trying his best to get the upstairs tenants to create less noise.

The tenant had two other witnesses who he said would provide similar testimony that the upstairs tenants were noisy sometimes. I did not call these witnesses as I advised the parties that an additional two witnesses who would provide such testimony would not significantly my understanding of the tenant's claim for a monetary award.

The landlord's counsel provided as a witness the upstairs tenant who moved into the rental unit and continues to live there with her two sons. She said that the tenant was always complaining about noise even when she and her sons were not doing anything

to produce noise. She testified that many nights her sons go to bed early because they attend school. She said that there are no loud parties in her rental unit.

The tenant also testified that he had an oral agreement with the landlords to conduct renovations and improvements to the rental home. He said that he kept a record of the work he performed on the premises. By the tenant's calculations, he said the landlords owed him \$12,000.00 for the unpaid labour he expended in these renovations. He also said that he purchased materials and supplies for these renovations, but did not submit any receipts regarding these purchases.

The male landlord stated in his affidavit that there was no agreement with the tenant to conduct renovations or other work on the rental property. On these points, he stated the following.

- ...5. That E proceeded to do unauthorized modification to the suite and proceeded to sublet the suite without our permission...*
- 7. That the modifications made by E were substantial including removing access and then the stairs to the main floor, adding additional walls, and creating a separate room for sub-tenancy purposes all against our wishes. We obtain nothing of any value and will have to incur costs to demolish what was constructed after he left...*

The male tenant and one of his witnesses, his daughter GDG, testified that the landlords were lying about all of these issues. The tenant said that he was authorized to conduct these renovations for which he should be entitled to a monetary award.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find no merit or basis to the tenant's claim that he is entitled to a monetary award for labour he performed in renovating and repairing the rental property. He had no written agreement with the landlords to perform work on the rental premises, work that the landlords maintain was unauthorized and of no value to them. Much of this work appears to have been designed to meet the tenant's own desire to obtain payments

from illegal sub-tenants he obtained to defray his rental costs. He provided no receipts for any of the purchases he claimed to have made and submitted no breakdown of the \$12,000.00 in labour he claimed to have performed for the landlords. Without written authorization from the landlords commissioning him to do work on their behalf and at their expense, I dismiss the tenant's claim for reimbursement for his labour in its entirety without leave to reapply.

The *Act* allows a party two years after the end of a tenancy to apply for dispute resolution. In this case, there was no evidence that the tenant submitted any request to the landlord to reduce his rent due to the loss of his quiet enjoyment during this tenancy nor did he apply for dispute resolution to seek a reduction in his rent. The tenant explained that he did not know that there was an RTB until he started receiving notices from the landlords to end his tenancy in September 2010. While I have no reason to disbelieve the tenant's testimony that he did not know about the RTB or the dispute resolution process until September 2010, this does not explain why the tenant waited until November 7, 2011 to file his application for dispute resolution seeking the maximum \$25,000.00 monetary award allowed under the *Act*. By then, his request for a monetary award for reduced rent pertained to noise complaints that he claims went unresolved for an unspecified 20 month period of his tenancy.

Since the basis for the tenant's application for much of the tenant's claim for a monetary award was uncertain and his written evidence was disjointed and unclear, I asked the tenant to direct my attention to any written record of his having raised written concerns about noise with the landlord that would entitle him to a monetary award for loss of quiet enjoyment. The tenant referred to pages 9 through 18, and 38 through 46 of his written evidence package as his proof that he raised his long-suffering complaints about noise to the landlords and they failed to take effective action.

I have reviewed the tenant's written evidence package carefully and thoroughly and have given particular attention to the pages he cited above as his specific evidence of his entitlement to a monetary award for loss of quiet enjoyment. I find that some of this written evidence relates to totally unrelated incidents, including allegations of missing or stolen rent money, disputes between different sets of tenants in the building, and the tenant's repeated notices that he might have to find alternate accommodation. One set of upstairs tenants did vacate the premises, but the tenant continued to be concerned about noise with the tenants who replaced them. Pages 36 through 46 of the tenant's written evidence involves a handwritten daily journal regarding the noises he heard from the upper rental unit. Although he said that he showed these to the landlords, he testified that as they were not interested in them, he never provided these to the landlords until he sent his evidence package to the landlord. The male landlord stated

in his written affidavit that the tenant knew that there was no insulation between the two floors of the rental property when he decided to rent a portion of the basement. He also testified at the hearing that he tried as best he could to mediate between the different tenants in this building but he did not consider that he had sufficient grounds to evict any of the tenants due to noise.

I should first note that I question the credibility of the testimony of the upstairs tenant who testified that her now 17 and 20 year old sons were model tenants and asleep in bed by 9:00 p.m. most nights as they were attending school. I also believe it likely that the landlords could have done more to address the noise complaints of the tenant during this tenancy.

My reservations about the testimony provided by the landlords and their witness do not lead me to conclude that the tenant has met the burden of proof required to demonstrate his entitlement to a monetary award for loss of quiet enjoyment or aggravated damages. Despite his concerns about noise, the tenant clearly chose to continue in this tenancy with the unusual and favourable arrangement whereby he could pay whatever he could in rent each month. I find that the tenant found this arrangement to his advantage despite its drawbacks until he submitted his claim for a huge monetary award 13 months after the landlords ended his tenancy. In coming to this determination, I do not question that the tenant found the noises originating in the upstairs rental unit troubling and bothersome. However, his heightened sensitivity to noise coming from the upstairs tenants does not entitle to a retroactive rent reduction for loss of quiet enjoyment of the premises more than a year after he ended his tenancy. He did not submit an application at the time that he was experiencing this noise for a reduction in ongoing rent. Even after learning the function of the RTB in monitoring compliance with the Act, the tenant did not apply for a monetary award until 13 months after he ended his tenancy. For these reasons, I dismiss the tenant's claim in its entirety without leave to reapply as I find that he has not met the burden of proof required to entitle him to a monetary award for losses arising out of this long-ended tenancy.

Since the tenant has been unsuccessful in his application, I dismiss his application to recover his filing fee from the landlords.

Conclusion

I dismiss the tenant's application without leave to reapply.

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 03, 2012

Residential Tenancy Branch