



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by way of conference call in repose to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

Service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on October 24, 2011. Mail receipt numbers were provided in the tenants' documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenants appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenants testify that this month to month tenancy started on July 01, 2011. This was a verbal agreement between the parties. Rent for this unit was \$800.00 per month and there was no agreement in place as to which day rent should be paid.

The tenants testify that the landlord left a note on one of the tenants vehicles on August 25, 2011 which stated the landlord wanted the tenants to move out in three days. The tenants state they replied to this note on August 27, 2011 to inform the landlord that they could not move out in three days and requested a meeting to talk about the landlords issues. On August 29, 2011 the landlord left another note that stated the tenants were trespassing and the landlord would call the police. On September 01, 2011 the tenants' testify the landlord walked into their unit and swore at the tenants telling them they must move out. At this time the tenants called the police and state the police advised the tenants to change their locks to prevent the landlord walking into their unit. The tenants testify that the landlord turned off their power on September 02, 2011. The tenants' state they had to run an extension cord from the downstairs unit to get power in their unit as the landlord had removed the breakers from the panel. The tenants' testify that on September 04, 2011 the landlord turned off the water to their unit. They had some cold water in the bathroom but no water in the kitchen.

The tenants testify that the landlord continued to harass the tenants about rent payments and telling them to get out of the unit. On September 02, 2011 the landlord came to the unit and broke the locks off with a hammer. The tenants called the police and the police prevented the landlord entering the tenants unit. The landlord kept trying to enter the tenants unit four more times and the police were called by the tenants each time. The tenant's state eventually they boarded up the door from the inside to prevent the landlord gaining entry to their unit. The tenants' testify they used another entrance until the landlord boarded up that access point also.

The tenants testify that they returned to their unit on October 01, 2011 and found all the lights on, doors open and a television and cell phone missing, The tenants found a combination knife and forced entry into the kitchen window and signs of forced entry on

the kitchen door. The tenants' state they called the police concerning this. The tenants testify that on October 02, 2011 the landlord removed the staircase to the tenants door effectively preventing them gaining access to their unit. The police were called again by the tenants and the landlord was told he cannot prevent the tenants' access to their unit; he was told not to enter the tenants unit and was told he is not to change the locks to the tenants unit. The tenants testify they had to use a ladder to get into their unit

The tenants' testify the next day the landlord came to the unit and boarded the doors and windows. The tenants called the police again and removed the boards with the police in attendance. After the police left the scene the landlord returned while the tenants were in their unit and boarded the windows and doors again. The tenants were able to get out of the unit and on October 04, 2011 the tenants testify that they returned to the unit and found the landlord had smashed the kitchen door in three pieces and was in their unit throwing their belongings out of the window. The tenants' testify that the police were again called and the landlord was arrested for breaking and entering. The police told the tenants that the landlord had been charged with this offense. After the landlord was released the police advised the tenants' not to return to the unit without a police officer present.

The tenants' testify they returned to the unit on October 05, 2011 and found only three or four pieces of their furniture remaining all other contents had been removed and the windows and doors were open.

The tenants' have provided the police officers names and file numbers concerning these incidents and a log of the incidents

The tenants state that due to the landlord's actions they lost their right to quiet enjoyment, lost their right to privacy, lost exclusive possession of their rental unit and suffered harassment and substantial interference from the landlord. The tenants seek the sum of \$24,000.00 in compensation.

Analysis

The landlord did not appear at the hearing to dispute the tenants' claims, therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and affirmed testimony before me.

I refer the parties to s.28 of the *Act* which establishes a tenant's right to quiet enjoyment, which include, but are not limited to:

- Reasonable privacy
- Freedom from unreasonable disturbance,
- Exclusive possession, subject to the landlord's right of entry under the Legislation, and
- Use of common areas for reasonable and lawful purposes, free from significant interference.

From the documentary evidence and the verbal testimony of the tenants presented at the hearing today it is my decision that the landlord has breached the covenant of quiet enjoyment. The tenants have shown that there has been substantial interference by the landlord with the tenants' ordinary and lawful enjoyment of the premises. The tenants have also shown that the landlord has physically interfered with the tenants' access to their rental unit by boarding up the windows and doors and removing the staircase to their unit. The tenants have shown that the landlord has entered their unit without prior written notice to do so and without permission from the tenants. The tenants have shown that the landlord intentionally restricted their power and water by turning these services off to the unit. The tenants have also shown that the landlord has engaged in a campaign of persecution and intimidation towards the tenants by repeatedly preventing the tenants' access, boarding up the tenants unit and entering the unit without consent and throwing the tenants belongings from a window even after the landlord was warned by the police to stop this behaviour.

The tenants have testified that the landlord's action started at the end of August, 2011 and continued until October 05, 2011 when the tenants' eventually had to leave the rental unit and end the tenancy. The tenants have applied for compensation of \$24,000.00. However, I find this amount to be excessive in line with the loss of value to the tenancy. I have therefore limited the tenants claim to a reasonable sum to compensate them for this loss of quite enjoyment and find the tenants are entitled to a Monetary Order to the sum of 3,000.00.

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,000.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: January 11, 2012.

Residential Tenancy Branch