

DECISION

Dispute Codes MNDC, OLC, RR, FF, O

Introduction

This is an application filed by the Tenant for a monetary order for compensation for loss of quiet enjoyment, an order for the Landlord to comply with the Act, to reduce rent for repairs, services or facilities agreed upon but not provided and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. Both parties have acknowledged receiving the evidence package submitted by the other party. As both parties have attended the hearing and have confirmed receipt of the evidence submitted by the other, I am satisfied that each party has been properly served with the notice of hearing and evidence under the Act.

The Tenant clarified during the hearing that she is withdrawing the RR and O portions (to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided and other) of the application for dispute.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for loss of quiet enjoyment?

Is the Tenant entitled to an order for the Landlord to comply with the Act, regulation or tenancy agreement regarding harassment and noise complaints?

Background and Evidence

This Tenancy began on December 1, 2011 on a fixed term until June 1, 2012 as shown by the signed tenancy agreement submitted by both parties. The monthly rent is \$1,050.00 payable by the 1st of each month and a security deposit of \$525.00 was paid to the Landlord.

The Tenant is seeking \$1,050.00 in a monetary order for the loss of quiet enjoyment. The Tenant states that she has given verbal notice 20-30 times since mid-january of noise complaints late at night around 11:30pm. The Tenant states that the Landlords who live upstairs are very noisy with their voices which have woken her son up at night on numerous occasions. The Landlord disputes this by first stating that this is a brand

new property just finished in November of 2011 which they moved into on March 3rd or 4th of 2012. The Landlord states that they have never received any verbal or written complaints of noise. The Tenant disputes this stating that she posted a copy of the Residential Tenancy Branch Policy Guidelines on the Landlord's door on January 30, 2012. The Landlord confirms that this found posted to their door with no explanations. The Tenant confirms that she did not provide any other information of her issues other than the Guidelines. The Landlord's stated that they tried to communicate with the Tenants over this, but were unable to as communication proved too difficult to achieve.

The Tenant also claims that the Landlord deliberately shut off the hot water to the residence. The Tenant states that on one day from approximately 3pm to around 8pm there was no hot water in the residence. The Tenant states that she called the Landlord about not having any hot water. The Tenant's witness, P.O. provided direct testimony that when she was at the residence at approximately 6pm when there was no hot water from the faucets. The Landlord confirms receiving a text message while at work that there was no hot water. When he attended the rental unit after being notified the Landlord and the Tenant upon inspection of the faucets that there was nothing wrong and that the Tenants had both hot and cold water.

The Landlord confirms that both he and his wife return home most every night around 11:30pm and that they also have a 3 year old child who is cared for by a sitter. The Tenant also claims that she is not receiving her mail. The Tenant states since January of 2012 that the Landlords are withholding her mail, but not that of her husband. The Landlords dispute this stating, "why would we withhold your mail and not your husbands?" The Landlord states that this is a shared mail box that is grouped at a central location in the development. The Landlord states that since they did not move in until March that the Landlord would periodically check mail every 10 days. The Landlord stated that at the beginning of the tenancy that since they were not yet in residence that the mail would be checked on this basis, but that if the Tenants required more frequent checks of the mailbox then they were to notify him. The Tenant states that the Landlord was notified of a missing package that she received the notice from Canada Post on March 14, 2012. The Landlord disputes this stating that he was not informed that in this circumstance that the Canada Post notice in reference was found by him on March 14, 2012 and was delivered to the Tenant on the same day.

The Tenant states that the Landlord, S.S. called her on one occasion yelling and screaming of the excessive utility bill. The Landlord disputes this stating that the Tenant was the party who was yelling excessively and that because of this any meaningful communication was not possible.

The Tenant states that the monetary claim of \$1,050.00 was determined at an amount equal to one months rent because that was what the information officer at the Residential Tenancy Branch told her was the normal claim. The Tenant states that this amount was an arbitrary amount and that no monetary losses were suffered.

Analysis

I find on a balance of probabilities that the Tenant has failed in her claim for \$1,050.00 for a loss of quiet enjoyment. Having reviewed all of the evidence, both documentary and the direct testimony of both parties, I prefer the undisputed evidence of the Landlord over that of the Tenant. The Tenant stated in her direct testimony that 20-30 noise complaints/incidents occurred from mid-january onwards late at night at around 11:30pm. I find this hard to reconcile with the direct evidence of the Landlord that they did not move into the residence until early March 2012. The Tenant's witness, P.O. when called into the hearing by the Tenant to provide evidence of numerous issues of noise, only provided evidence that she was in attendance at approximately 6pm on a day that she was invited to dinner that there was no hot water. The Tenant states that the hot water problem was gone by 8pm with no apparent cause. I find that there were unexplained inconveniences such as the hot water issue on one occasion and the late delivery of the Canada Post Delivery Notice, but that the Tenant has not provided any evidence of any harassment or ongoing issues of noise. The temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. The Tenant's application for a monetary order for the loss of quiet enjoyment is dismissed without leave to reapply. The Tenant has also failed to establish a claim that the Landlord is not complying the Act, regulations or the tenancy agreement. This portion of the application is also dismissed.

Conclusion

The Tenant's application for a monetary claim and for the Landlord to comply with the legislation and/or the tenancy agreement 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: March 28, 2012.

Residential Tenancy Branch