



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order for the return of his security deposit and a cross-application by the landlords for a monetary order and an order authorizing them to retain the security deposit. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in May 2008 and that the tenant paid a \$475.00 security deposit on April 14, 2008. They further agreed that the tenant vacated the rental unit on February 29, 2012 and that while they jointly inspected the rental unit at the end of the tenancy, they did not create a condition inspection report. The rental unit is located on the lower floor of a home in which the landlords occupy the upper floor. Monthly rent was set at \$1,000.00.

The tenant claimed that the landlords forced him to move from the rental unit and seeks to recover his moving costs. He testified that the landlords made an unreasonable amount of noise making it impossible to live in the unit. The tenant stated that the landlords and their children would drop items on the floor, move furniture, run, close cabinet drawers loudly, use the laundry room late at night, open the garage door at night and use the hot tub late at night. He stated that his young daughter was a light sleeper and would awaken when the laundry room was used and when the garage door opened.

The landlords testified that although he had lived in the unit since 2008, the tenant had not complained of noise until the summer of 2011, after which he made continual complaints, although the noise level produced by the landlord had not changed. They further testified that they had only used the laundry room late on a few occasions and had only opened the garage

door and used her jetted tub late at night on one occasion. The tenant insisted that the laundry issue had occurred repeatedly.

The parties agreed that in or about June 2011, the landlords had advised the tenant that they planned to move to Montreal and rent the upper floor of the residential property to another party and that the landlords asked the tenant to renegotiate the percentage of utilities that he was responsible to pay. The tenant declined to renegotiate the tenancy agreement. The landlords changed their mind and chose to continue to reside at the residential property.

The tenant testified that he is convinced that the landlords started making excessive noise after June 2011 in order to drive him out of the property so they would not have to pay him a month's compensation for ending his tenancy. The landlords denied any lifestyle change whatsoever and stated that they had no intention of driving the tenant from the rental unit. The tenant seeks an award of \$1,000.00 which he claimed that he should have received if the landlords had ended his tenancy pursuant to a 2 month notice to end tenancy.

The landlords testified that on February 2, the tenant gave them verbal notice that he was leaving at the end of the month. They requested that he provide written notice and he did so on February 6. They testified that they began advertising via word of mouth in February and in late February tried to advertise online on Craigslist, but discovered that the ad had not been posted. In March they was able to successfully post an advertisement.

The landlords seek to recover loss of income for the month of March as they did not receive a full calendar month's notice from the tenant. The tenant maintained that he specifically asked the landlords if there would be any additional charges if he were to move out at the end of February and was told that there would be no charges.

The landlords seek to recover \$112.00 as the cost of cleaning the carpet at the end of the tenancy. The tenant acknowledged that he did not clean the carpet.

The landlords also seek to recover \$58.00 as the cost of cleaning the rental unit. They claimed that they had to clean the bathroom and wipe the walls of the rental unit at the end of the tenancy. The tenant testified that when he and the landlords inspected the unit, the only issue brought to his attention at that time was the carpet. The landlords provided a photograph of the toilet showing mild staining.

Both parties seek to recover the \$50.00 filing fees paid to bring their respective applications.

Analysis

First addressing the tenant's claim, the tenant chose to live in a multi-family dwelling and therefore cannot expect the same degree of protection from noise as he might expect had the

dwelling been a single-family residence. In other words, some transference of sound had to be expected from the other family living in the residence. I am not persuaded that the landlords made additional noise in an attempt to drive the tenant from the premises. Their testimony regarding their change of heart about moving to Montreal makes sense and is consistent with their actions. I find it more likely than not that the tenant was offended by the landlords' attempt to renegotiate the tenancy agreement and because he believed he was entitled to compensation, he allowed himself to become hyper-sensitised to the noise from the landlords' residence.

I find it unlikely that the noises complained of by the tenant had changed significantly from before June 2011 and many of the noises represent normal, daily activities. The tenant entered text messages into evidence showing that he complained about virtually every noise emanating from the landlord's unit, including the dishwasher and the sound of people walking across the floor. I am not satisfied that the noise produced by the landlord was so excessive that it forced the tenant to move. I therefore dismiss the tenant's claim for moving expenses.

I dismiss the tenant's claim for the cost of registered mail and parking at the Residential Tenancy Branch as these are litigation-related expenses. Under the Act, the only litigation-related expense I am empowered to award is the cost of a filing fee.

I also dismiss the tenant's claim for an award of one month's rent. Compensation of this nature is only payable when a 2 month notice to end tenancy has been served pursuant to section 49 of the Act. A desire to rent an adjacent but completely separate unit is not grounds to end a tenancy and even if the landlords had followed through on their plan to move to Montreal and rent their own living space to other tenants, they would not have been entitled to end the tenant's tenancy under a section 49 notice. I find no merit to this claim.

The tenant filed for the return of his security deposit prior to the end of the tenancy. Although as explained below the tenant will receive a portion of the deposit back, I find that his application for the return of the deposit was unnecessary as the balance would have been awarded to him upon the hearing of the landlords' application, so his application was both premature and unnecessary. For this reason, I find that the tenant should bear the cost of his own filing fee.

Turning to the landlords' claim, in order to substantiate a claim for loss of income for the month of March, the landlords must prove that they acted reasonably to minimize their loss. Although they claim that they made an attempt to advertise by word of mouth and through their unsuccessful attempt to advertise on Craigslist in February, I find that these efforts were not reasonable. Upon receiving the tenant's notice, the landlords should have immediately ensured that public advertisements were placed in order to re-rent the unit. I find that they did

not take reasonable steps to minimize their losses and therefore dismiss the claim for loss of income for March.

Residential Tenancy Policy Guideline #1 states that when a tenancy has lasted for at least one year, tenants are expected to shampoo carpets. As the tenant acknowledged that he did not shampoo the carpet, I find that the landlords are entitled to recover that cost and I award the landlord \$112.00.

I dismiss the landlords' claim for the cost of cleaning the rental unit. The landlords' photographs show that perhaps a minimal amount of additional cleaning was required and in the absence of a written report showing that the unit was not reasonably clean, I am not persuaded that \$58.00 worth of cleaning was required.

As the landlords have been partially successful in their claim, I find it appropriate that they recover one half, or \$25.00, of the filing fee and I award them that sum.

Conclusion

The tenant's claim has been dismissed and the landlords have been awarded \$137.00. I order the landlords to retain \$137.00 from the \$475.00 security deposit and the \$5.10 in interest which has accrued to the date of this judgment and I order the landlords to return the balance of \$343.10 to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$343.10. This order may be filed in the Small Claims Division of the Provincial Court and enforced 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: April 05, 2012

Residential Tenancy Branch