



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O

Introduction

This hearing dealt with an application by the tenant for money owed or compensation due to damage or loss and other.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This fixed term tenancy began April 1, 2011 and had an effective end date of April 20, 2012. The property in question was sold in February 2012 and on February 23, 2012 the tenant was provided with a 2 Month Notice to End Tenancy for Landlord's use of Property with an effective end of tenancy date of April 30, 2012.

On March 13, 2012 the tenant provided the landlord with a 10 day notice to vacate and subsequently vacated the property on March 22, 2012.

The tenant testified that because of the renovations in the upper rental unit that started on March 2, 2012 she had to vacate her rental unit early. The tenant stated that the landlord never provided her with written notice that the renovations would be taking place and that the noise from the renovations made living in the lower rental unit impossible and caused both her and her child great distress. The tenant stated that she would hear dragging, dropping and banging noises from the upstairs unit. The tenant also stated that she started to hear noises in the middle of the night that cause her distress. The tenant stated that she was not always in the rental unit all the time but that when she was there the renovation noise was constant.

The tenant stated that she sent repeated text and email messages to the property manager about the noise and also contacted him by phone on numerous occasions.

The tenant stated that she had mailed evidence in to the residential tenancy branch but was very vague as to when this happened and what evidence had been sent in.

The property manager testified that the tenant had contacted him about noise in the rental unit when she lived there but that he did not recall specific complaints related to the renovation noise. The tenant responded by stating that at the time she was very stressed out and had a speech impairment and the property manager may not have understood her clearly.

The landlord testified that the renovation work that was to be completed was discussed with the tenant by their realtor and that the tenant had stated that work being completed during the day would not be a problem as her daughter would be at school. The landlord stated that the area being renovated was in the dining room which is located above one of the bedrooms in the main unit and not directly above the tenant's rental unit. The landlord also verified that the new owner did not have keys to the property until March 4, 2012 so there was no way the tenant could even have been disturbed starting March 2, 2012.

The landlord stated that the tenant was very pro-active during the tenancy when it came to contacting the landlord's agent about any problems in the rental unit. The landlord stated that the tenant however never informed them that the renovation noise was disturbing the peace and quiet enjoyment of the tenant's rental unit and as a result, the landlord never had any opportunity to address the issues if in fact there was one.

The landlord stated that the installation of the flooring did not start until March 12, 2012 just 1 day prior to the tenant giving notice. The landlord maintained that one day of renovation would not have been sufficient for the tenant to effectively determine what level of disturbance the renovation work would cause.

The tenant in this application is seeking \$2500.00 for distress, noise and moving costs.

Analysis

Based on the documentary evidence and testimony of the parties I find that the tenant has not proven that they are entitled to compensation due to damage or loss.

The landlord has provided evidence and testimony that establishes the fact that the landlord did not receive complaints from the tenant about noise associated with the installation of the new flooring in the upstairs dining room. The landlord testified to being very responsive to complaints from his tenants and that he would have addressed this issue had he received a complaint. The landlord has also provided documentation that they had advised the tenant of the upcoming renovation work and that the renovation work did not start until March 12, 2012. The landlord has also established that the only area in the upstairs unit that was having new flooring installed was the

dining room and that the work was being completed during the hours of 9:00AM and 4:00PM.

The tenant has not provided copies of any complaint text messages or emails that were sent to the property manager regarding the noise from the installation of the flooring. The tenant has also not given any specifics to dates and times of the 'impossible living conditions'. The tenant in their application states that they had to move on short notice however the tenant gave notice to the landlord just 1 day after the renovation work started and with the knowledge that the tenancy was already effectively ending April 30, 2012. The tenant also stated that she was never given written notice about the renovations however that is not a requirement of the Act.

Residential Tenancy Act **Section 62 Director's authority respecting dispute resolution proceedings** speaks in part to:

- (4) The director may dismiss all or part of an application for dispute resolution if*
 - (a) there are no reasonable grounds for the application or part,*
 - (b) the application or part does not disclose a dispute that may be determined under this Part, or*
 - (c) the application or part is frivolous or an abuse of the dispute resolution process.*

A claim in Tort is a personal wrong caused either intentionally or unintentionally and in all cases, the applicant must show that the respondent breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find on a balance of probabilities that this claim rises to that requirement.

In this case I find that the tenant's application is frivolous and an abuse of the dispute resolution process as the tenant has made this claim for \$2500.00 compensation on grounds that they have clearly not proven or provided any substantiating evidence for.

I also do not find that the tenant has met the requirement for a claim for aggravated damages, if such is the claim, and the requirement is that the aggravated damages must be specifically sought.

The tenant's application is therefore dismissed in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety 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: May 24, 2012

Residential Tenancy Branch