



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for compensation under the Act, and an order to return all or part of the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Issue

I find that due to section 77(3) of the Act and the legal principal of Res judicata, I cannot grant the tenants request to hear the issue of the security deposit as this matter was already heard and decided upon at the hearing on August 29, 2011 and the decision awarded the landlord a monetary order and the landlord was granted permission to retain the security deposit in partial satisfaction of the claim.

Additionally, section 80 of the Act sets out the time frames in which a Review of a decision can be applied for. The tenant did not file for a review as required by the Act. Therefore, I dismiss the tenant's request to change that decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation under the Act?

Background and Evidence

The tenancy started on August 1, 2010. The rent was \$850.00 payable on the first day of each month. The tenant paid a security deposit in the amount of \$425.00.

The tenant testified that he is seeking compensation for loss of quiet enjoyment.

The tenant testified that the occupants in upstairs unit had a party that lasted from October 24, 2011, to November 10, 2011. The parties were at all different times, sometimes starting at 4:00 P.M. Sometimes it was from 4:00 P.M. to 6:00 P.M. and

other times from 8:00 P.M. to midnight. Some started late into the night and early mornings.

The tenant testified that parties started again in December 2011. The tenant stated he told the landlord in December 2011 and the landlord asked him to put the complaint in writing. The tenant stated he was not willing to put the complaint in writing as he did not want the occupant's in the upstairs unit to know he had issued a complaint.

The tenant testified that in February 2012, when the landlord went on a holiday the occupants in the upstairs unit were partying again and he made the decision to move from the rental unit.

The landlord testified he never received any complaints regarding parties in October 2011 or November, 2011. The landlord stated the only time he ever received a complaint from the tenant was in December 2011 and he immediately went and spoke to the occupants in the upstairs unit and was satisfied that the issue was resolved.

The landlord testified he has never received any further complaints from the tenants since the incident in December 2011 and was surprised when he came back from vacation to find that the tenants had moved out.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The evidence of the tenant was that he only complained to the landlord on one occasion and the landlord asked him to put the complaint in writing. The evidence of the landlord was when he received the complaint from the tenant in December 2011, he immediately went and spoke to the occupants in the upstairs unit and felt the issue was resolved.

The evidence of the both parties was the landlord was not contacted with any further complaints regarding the occupants in the upstairs unit.

In this case, the tenants only notified the landlord on one occasion in December 2011, that the upstairs occupants were having parties that interrupted their quiet enjoyment. The landlord spoke to the upstairs occupants and resolved the issue. The landlord did not receive any further complaints from the tenants.

The landlord had the right to rely on the actions of the tenants. The landlord believed he had resolved the issue in December 2011. The landlord cannot be held responsible for action of other occupants unless notified that a problem exists. Therefore, I dismiss the tenants' claim for compensation for loss of quiet enjoyment.

As the tenants were not successful with their application, the tenants are not entitled to recover the cost of filing the application from the landlord.

Conclusion

The tenants' application 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: May 03, 2012.

Residential Tenancy Branch