



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 the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for damage or loss, pursuant to Sections 28, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began prior to this landlord's ownership of the residential property. The tenant submitted a copy of a tenancy agreement signed by the tenant and the then landlord for a month to month tenancy that began on October 2, 2010 for a current monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 and a pet damage deposit of \$100.00 paid.

The tenant submits that he has complained about being disturbed by the neighbouring rental unit since he has moved in and as a result of inconsistent landlords due to foreclosures and bank repossessions of the property nothing has been done by the landlord to rectify the disturbances.

The tenant has submitted several documents that record, primarily, incidents that involved tenants from the basement rental unit next door with some notations of problems with the upstairs tenant next door.

The landlord testified that he was waiting for a written letter from the tenant complaining about the neighbouring tenant and that this tenant showed it to him on April 26, 2012 and as a result the neighbouring tenant vacated the rental unit just prior to this hearing.

The landlord testified he doesn't like to evict people but that he rather wanted to help the tenant and so he paid the neighbouring tenant \$500.00 and personally helped her move her belongings as well as clean up the rental unit and discard items she did not

want. In the landlord's handwritten notes he states that he had spoken to the neighbouring tenant at least 20 times and that he believed the behaviour had finally stopped.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy; freedom from unreasonable disturbance; exclusive possession; and use of common areas for reasonable and lawful purposes, free from significant interference. It follows that the landlord is responsible for ensuring the tenant enjoys this undisturbed use of the unit.

I accept the landlord's position that the tenant has failed to display an extensive history of problems with the tenants in the upper rental unit in the unit next to him. However, from the landlord's submission, it is clear that the tenant has provided this landlord with extensive complaints about the neighbouring tenant. This is evident from the landlord's written statement that he had spoken to the neighbouring tenant at least 20 times.

I find the landlord did take steps and was successful, by ending the neighbour's tenancy, in dealing with this tenant's complaints about losing quiet enjoyment of the rental unit. However, I accept the landlord was made aware of problems with the neighbouring tenant shortly after he took ownership of the residential property and I therefore find his failure to end disturbances the applicant tenant in a reasonable timeframe has caused the tenant a loss in the value of his tenancy.

I find that this loss resulted directly from the landlord's failure to comply with the requirements under Section 28 to ensure the tenant had quiet enjoyment of the unit. While the tenant's claim was for an amount that is the equivalent of 1 month's rent and since it was based on complaints from the start of the tenancy that I have found (above) the tenant has failed to establish, I find the tenant is entitled to compensation only for the period since this landlord took ownership, in the equivalent of ½ month's rent.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$450.00**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: May 22, 2012.

Residential Tenancy Branch