



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on a one month Notice to End Tenancy for cause, a monetary order, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Agent for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent testified they served the Tenant with the Application and Notice of Hearing by registered mail, sent on July 31, 2012. Under the Act the Tenant is deemed served five days later. Although the Tenant did not attend the hearing, I find the Tenant was duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

At the outset of the hearing the Agent for the Landlord testified that they were no longer seeking an order of possession for the rental unit, rather the Landlord only wanted to recover \$200.00 from the Tenant for a strata fine.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Background and Evidence

The rental unit is located in a building which is regulated under the Strata Property Act. The Landlord provided evidence that the Tenant had been found by the strata council to have been disturbing other occupants at the building with noise coming from the rental unit.

The strata council wrote to the Agent for the Landlord on January 24, 2012, and informed them there was a complaint of loud music coming from the rental unit occupied by the Tenant. This first letter was a warning.

On February 6, 2012, the strata wrote to the Agent once more, regarding a second noise disturbance, this one involving loud voices coming from the subject rental unit. Evidence submitted by the Landlord indicates there have been several complaints about noise coming from the subject rental unit.

The Agent submitted that the strata letters had been sent to the Tenant and there had also been conversations with the Tenant conducted by a different Agent for the Landlord regarding the noise complaints.

Both letters contain information that the Agent or Tenant may dispute these complaints with the strata, as well as copies of the strata bylaw. There is no evidence the Tenant disputed these complaints by writing to or appearing in front of the strata council.

On February 21, 2012, the strata council fined the Landlord \$200.00 due to the noise complaints.

According to the testimony of the Agent, the Tenant has not paid these fines to the Landlord, despite their requests to her.

On June 12, 2012, a different Agent for the Landlord issued the Tenant a 10 day Notice to End Tenancy for unpaid "utilities" in the amount of \$200.00. The Agent testified this represents the \$200.00 fine from the strata.

The Agent for the Landlord testified this notice was served on the Tenant by posting it on the door.

Analysis

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

Although the notice indicates the \$200.00 being sought from the Tenant is "utilities", I find there has been sufficient notice given to the Tenant of what the \$200.00 was comprised of, that is, a fine for excessive noise. While this notice might not have been sufficient to end the tenancy, I find the Tenant knew or ought to have known what the \$200.00 referred to.

Section 67 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Under section 47(1) of the Act, the Tenant must not unreasonably disturb another occupant of the residential property. In this instance, I find the Tenant has breached section 47(1) by unreasonably disturbing another occupant of the property and the Landlord will suffer a loss due to that breach.

Therefore, I find that the Landlord has established a total monetary claim of **\$250.00**, comprised of \$200.00 for the strata fine and the \$50.00 fee paid by the Landlord for this application. I grant the Landlord an order under section 67 for the balance due of \$250.00.

I order the Tenant to pay this within 30 days of receipt of this Decision and order.

The Tenant is cautioned that failure to pay the Landlord the \$250.00 within the 30 days may cause the Landlord to issue a Notice to End Tenancy based on section 47(1)(l) of the Act.

The Tenant is also cautioned that the Landlord might also issue a Notice to End Tenancy for the noise disturbances, again under 47(1) of the Act.

The monetary order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay the Landlord for a strata fine. I find the Landlord is entitled to receive a \$200.00 payment from the Tenant for this fine, plus the \$50.00 for the filing fee for the Application.

The Landlord is granted a monetary order for the balance due of \$250.00. If the Tenant fails to pay this, the Landlord might issue a Notice to End Tenancy to the Tenant for this, or for unreasonable noise at the rental unit.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: August 24, 2012.

Residential Tenancy Branch