



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC, OLC, MNR, MNSD, FF

Introduction

This hearing deal with cross applications. The tenant originally applied to cancel a Notice to End Tenancy for Unpaid Rent and for a Monetary Order for compensation for damage or loss under the Act, regulations or tenancy agreement. The tenant subsequently submitted an amended application removing his request to cancel the Notice to End Tenancy and indicated he sought Orders for compliance. The landlord filed an application for a Monetary Order for unpaid rent; NSF fee, cleaning costs; and, authorization to retain the security deposit.

Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

I determined that the tenant had provided late evidence to the Branch and the landlord. The landlord was provided an opportunity to review the tenant's late submission and the landlord indicated a willingness to have the tenant's evidence included. I accepted and considered the tenant's late evidence.

I determined that the tenancy has ended; thus, it was not necessary to consider Orders for compliance and that portion of the tenant's application was dismissed.

Finally, I cautioned the tenant that his application and submission did not provide full particulars as to the specific period of time he suffered loss of quiet enjoyment or how he determined or calculated the loss for which he was seeking monetary compensation. The tenant insisted he wanted his monetary claim to be heard at the scheduled hearing. Accordingly, I proceeded to hear from the parties with respect to the tenant's application

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover unpaid rent, NSF fees, and cleaning costs from the tenant?
2. Has the tenant established an entitlement to compensation for loss of quiet enjoyment of the rental unit?

Background and Evidence

The tenancy commenced March 21, 2008 and the tenant vacated the rental unit May 31, 2012. The tenant paid a \$1,150.00 security deposit in 2008 which was transferred to a subsequent tenancy agreement. The most recent tenancy agreement required the tenant to pay rent of \$2,200.00 plus \$75.00 for parking on the 1st day of every month.

The tenant gave written notice to end tenancy on April 30, 2012 to be effective May 31, 2012. The tenant's cheque dated May 1, 2012 in the amount of \$2,275.00 was returned for insufficient funds. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on May 15, 2012.

The parties conducted a move-out inspection together on May 31, 2012. The tenant authorized, in writing, a deduction of \$145.00 for cleaning.

Landlord's application

The landlord is seeking to recover unpaid rent and parking for May 2012 in the amount of \$2,275.00. The landlord requested an NSF fee of \$25.00 although there is no clause providing for such a charge in the tenancy agreement. The landlord withdrew the request to recover the NSF fee. The landlord requested recovery of the actual cleaning costs of \$130.00 rather than the \$145.00 authorized by the tenant.

The tenant submitted that after he was notified that his rent cheque was dishonoured he advised the landlord he was experiencing financial duress and requested the landlord offset the security deposit against the rent owed. The landlord refused to do so but gave the tenant an extension to May 14, 2012 to pay the rent. The tenant could not obtain the necessary funds by May 14, 2012 and he was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). Although the landlord informed the tenant that he could stay until May 31, 2012 the tenant felt he had no choice but to dispute the Notice since he had movers booked for the end of the month and because the landlord would not offset the security deposit against the rent.

Tenant's application

During the hearing the tenant submitted that from June 23, 2011 through August 15, 2011 he suffered a loss of quiet enjoyment of his unit by way of sleepless nights due to noise coming from the common areas. The tenant complained to the landlord via email on a number of occasions. The situation improved when a security guard was hired August 15, 2012. The tenant explained that he is seeking the equivalent of one-month's rent for the loss of quiet enjoyment due to noise.

The tenant submitted that the landlord gave insufficient notice of entry by way of an email sent to residents at 2:44 p.m. on September 7, 2011 for a fire safety inspection that would be taking place September 8, 2011 between 8:30 a.m. and 5:00 p.m. The tenant claimed that on September 8, 2011 the tenant awoke to find someone in his unit inspecting his smoke detector. The tenant emailed the landlord to inform the landlord of his right to receive 24 hours of proper notice. The landlord responded, via email, apologizing but also advising the tenant that the smoke detector inspection would take place the following day. The tenant submitted that he should be compensated the equivalent of one day's rent for this intrusion.

The landlord acknowledged that there have been challenges with people accessing the common property and creating noise. The landlord explained that the residential property is sandwiched between a university and a liquor store and has a dedicated easement to allow for pedestrian traffic. Since acquiring the property in 2009 the landlord has invested many thousands of dollars on fencing, gates, and locks in an attempt to curb people from loitering. In addition, the landlord has hired security staff and met with the community police and campus policing liaisons to address the issue.

Although the landlord acknowledged there was a lack of communication with the tenant as to the steps the landlord was taking to deal with the noise situation the landlord submitted that the landlord was taking action. The landlord attributed the improvement in the noise levels in September 2011 to a tenant that moved out and adjusting the time the gates locked.

With respect to the entry on September 8, 2011 the landlord acknowledged an administrative error was made in failing to give the tenant sufficient notice of entry. The landlord explained that it is the landlord's policy that a caretaker enter only after knocking three times. After knocking and receiving no response the caretaker will enter under the presumption the tenant is away.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon review of the evidence before me, I provide the following findings and reasons with respect to each application.

Landlord's application

Upon review of the tenancy agreement I am satisfied the tenant is obligated to pay the rent and parking in the amount of \$2,275.00 for the month of May 2012 and the tenant failed to do so. Accordingly, I award the landlord \$2,275.00 as claimed.

A tenant is required to leave a rental unit reasonably clean at the end of a tenancy. I am satisfied by the written consent for a deduction from the security deposit that the rental unit required additional cleaning. Since the landlord's actual claim is less than the amount authorized by the tenant I award the landlord the lesser amount of \$130.00 as claimed.

As the landlord was largely successful in its claims against the tenant I award recovery of the filing fee to the landlord.

The landlord has been awarded a total of \$2,455.00. The landlord is authorized to retain the tenant's \$1,150.00 security deposit in partial satisfaction of the amounts awarded to the landlord leaving a balance owing of \$1,305.00.

Tenant's application

The Act provides that a tenant is entitled to quiet enjoyment of the rental unit. Residential Tenancy Policy Guideline 6 provides a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate, as it relates to the covenant of quiet enjoyment.

The policy guideline provides, in part, that a breach of quiet enjoyment may be found in situations where there is frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct. Situations that may be a basis for finding a breach of quiet enjoyment include:

- entering the rental premises frequently, or without notice or permission
- unreasonable and ongoing noise

However, the policy guideline also provides that temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

The tenant verbally testified he was disturbed to find someone in his apartment on September 8, 2011 and should be compensated one day's rent for such a breach. However, upon review of the documentary evidence I do not see evidence to support the tenant's statements. The email evidence indicates the landlord sent the tenant an email on September 7, 2011 advising of the upcoming inspection and the tenant responded on September 8, 2011 with statements that the inspection should be called off due to insufficient notice. The tenant does not indicate that he was disturbed by someone entering his unit. The next communication is from the landlord who states that entry into his apartment will be delayed another day. There was no further communication from the tenant about improper entry. Therefore, I conclude that if the unit was entered on September 8, 2011 the tenant must have suffered only temporary discomfort as he did not mention it in his email to the landlord. As temporary discomfort is not a basis for finding loss of quiet enjoyment I deny the tenant's claim for compensation.

It was acknowledged that there were noise disturbances during the period of June through August 2011 caused by university students loitering in the playground in the early morning hours. It is also undisputed that the tenant emailed the landlord on various occasions to complain about the noise disturbances. At issue is whether the landlord sat idly by and permitted others to engage in disturbing behaviour. Upon review of the evidence and the landlord's verbal testimony I accept that the landlord was taking action to remedy the noise situation by meeting with the campus security or dealing with the fence/gate installer. These actions may have not been

obvious to the tenant; however, I find the landlord has successfully rebutted the tenant's assertion that the landlord was not taking action to address his complaints. While the tenant may have been of the position the landlord could have done more or should have done something specific like hire a security guard sooner the fact the landlord did not follow the tenant's suggestions is not in itself a basis to find a breach of quiet enjoyment.

Further, I noted the tenant may have had unreasonable expectations given the location of the residential property by a university and a liquor store. I find the tenant may have had unreasonable expectations of noise levels as demonstrated in his email to the landlord complaining of lawn cutting taking place at 8:00 a.m. when he is of the opinion lawn cutting should not be done before 10:00 a.m. The Act actually contemplates activity by the landlord between the hours of 8:00 a.m. and 9:00 p.m. as evidence by section 29 of the Act.

Having considered all of the evidence I find the tenant has not met his burden to prove that the landlord sat idly by and permitted others to disturb him, causing the tenant to suffer a loss equivalent to one month's rent. Therefore, I have dismissed his claim for compensation for loss of quiet enjoyment due to noise.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance owing of \$1,305.00 to serve upon tenant and enforce as necessary.

The tenant's application has been dismissed in its entirety.

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: August 22, 2012.

Residential Tenancy Branch