



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDC
Tenant: MNSD, SS, FF

Introduction

This hearing was convened by way of conference call in response to applications made by the landlord and by the tenant. The landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit, for an order permitting the tenant to serve documents or evidence in a different way than required by the *Act*, and to recover the filing fee from the landlord for the cost of the application.

Both parties attended the conference call hearing, each provided evidentiary material in advance of the hearing and both gave affirmed testimony. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing the parties agreed that there are no issues with respect to service of documents or evidence, and I find that the tenant's application for an order permitting the tenant to serve documents or evidence in a different way than required by the *Act* is not necessary, and that portion of the tenant's application is hereby dismissed.

Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to a monetary order as against the landlord for return of all or part of the pet damage deposit or security deposit?

Background and Evidence

The parties agree that this fixed term tenancy began on March 1, 2012 and was to expire on August 31, 2012, although the tenant moved from the rental unit in June, 2012, having paid rent for June. Rent in the amount of \$1,000.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. In February, 2012 the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord. A copy of the tenancy agreement was provided prior to the commencement of the hearing.

The landlord testified that the tenant gave written notice to the landlord on May 25, 2012 to move from the rental unit by June 29, 2012 describing disturbances experienced during the tenancy. A copy of the letter was provided for this hearing and it also provides a forwarding address for full reimbursement of the security deposit. The landlord responded to the tenant in an email on May 27, 2012 stating that the landlord had received the tenant's notice and would advertise the rental unit. An advertisement ran on Kijiji, an on-line advertising website starting on May 27, 2012 which continued to run until July 12, 2012. The landlord also placed an advertisement on Craigslist on June 7, 2012, which is another free advertising website. Copies of the advertisements were not provided for this hearing. The landlord testified that the rental unit was re-rented for a tenancy beginning on July 15, 2012.

During cross examination, the landlord testified that photographs had been on the advertisements before this tenant moved in, and the new advertisements had photographs added after they had been posted, but weren't on the sites during the whole time the advertisements were on-line.

Copies of numerous emails were provided for this hearing which describe an on-going problem with tenants in another rental unit directly above this rental unit. The problems include spraying bear spray in the building, smoking marihuana, stealing the tenant's licence plates, parties, fights and loud music and other noise late at night starting from the beginning of the tenancy to the end of the tenancy. The emails show that the tenant continuously complained to the landlord and the landlord forwarded or followed up with the complaints by contacting the strata council and the owner of the other rental unit.

The landlord claims half a months' rent from the tenant which is equal to the security deposit held in trust.

The tenant testified that the landlord was asked, and assured the tenant before the first rent cheque was written that the apartment was in a quiet building and the tenant did not have to worry about disturbances. The tenant has a 4 year old child, and noises in the rental unit from an apartment above started immediately after the tenancy began.

The landlord then told the tenant that a previous tenant had moved out because of the noise. The landlords were not honest when the tenancy agreement was made.

The tenant also testified that on April 29, 2012 a person spit on the tenant's car and then someone threw dirty socks on the tenant's vehicle after the tenant had called the police. The perpetrators were arrested on April 28, 2012.

In another incident, the tenants in the upper unit sprayed pepper spray over the balcony and urinated over the balcony which was directly above the balcony of the tenant. During that disturbance 7 police cars arrived and some policemen were not able to get into the building due to the strong pepper spray. The police did go in through the side door of the building, and the tenant was ultimately told by the strata council that 2 of the 3 tenants in that apartment had been evicted.

The tenant further testified that the landlord was made aware of the disturbances several times during the course of the tenancy, but the landlord didn't tell the strata council about any of the complaints and were not at all aware of the tcomplaints.

The tenant's notice to end the tenancy is a 2-page typewritten letter dated May 25, 2012 that again describes several incidents and that the situation did not improve, and that if there had been an improvement, the tenant would not move out. The letter also contains a forwarding address for the tenant.

Analysis

In the circumstances, I am satisfied that the tenant suffered numerous situations that caused the tenant to be disturbed and fearful. I am also satisfied that the landlord took steps to rectify the situation but was unsuccessful.

A landlord is required to provide a rental unit that provides a tenant with quiet enjoyment. In this case, I find that the landlord collected rent but was not able to provide quiet enjoyment and the tenant was justified in terminating the tenancy prior to the end of the fixed term.

The landlord may have a claim as against the strata council or the landlord for the rental unit that occupied the noisy and inconsiderate tenants, however, having found that the tenant was justified in vacating the rental unit prior to the end of the fixed term, I find that the tenant is entitled to recovery of the security deposit and the filing fee for the cost of this application.

Conclusion

For the reasons set out above, the tenant's application for an order permitting the tenant to serve documents or evidence in a different way than required by the *Act* is hereby dismissed.

I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$550.00.

This order is final and binding on the parties and may be enforced.

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: October 12, 2012.

Residential Tenancy Branch