

DECISION

Dispute Codes MNDC, OLC, PSF, O

Introduction

This is an application filed by the Tenant for a monetary order for money owed or compensation for loss of quiet enjoyment, for an order for the Landlord to comply with the Act, regulation or tenancy agreement and to provide services or facilities required by law.

This application was previously adjourned from June 18, 2012 to July 13, 2012 and then again by consent to October 15, 2012.

Both parties attended the hearing in person and gave testimony. Both parties confirmed receipt of the notice of hearing and evidence submitted. As both parties have attended the hearing and have confirmed receipt of the evidence submitted by the other party, I am satisfied that both have been served as deemed under the Act.

The Tenant clarified during the hearing and amended her application for a monetary order for loss of quiet enjoyment for compensation for the return of her \$700.00 monthly rent from December 2011 to September 2012 time period (10 months), totalling \$7,000.00. The order for the Landlord to comply with the Act and provide services or facilities are withdrawn as those issues relate to another Tenant who has moved and are no longer required. The Tenant has not provided any further details for these portions of the application.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for the loss of quiet enjoyment?

Background and Evidence

This Tenancy began on April 7, 2011 on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$700.00 payable on the 1st of each month and a security deposit of \$350.00 and a pet damage deposit of \$350.00 were paid on April 7, 2011.

The Tenant states that the Landlord was negligent in dealing with her repeated complaints of another Tenant of bullying, harassing, threatening, assaulting and filing false accusations against her. The Tenant has submitted numerous documents relating primarily with another Tenant in the building, G.L. The Tenant states that the Landlord was notified numerous times over the December 2011 to September 2012 period of the threatening behaviour by this other party. The Landlord disputes this stating that all of the Tenants issues were investigated and that both the Landlord and police that were called in by the Tenant were unable to determine who was at fault in these incidents. The Landlord refers to the documentary evidence (police reports and email exchange) submitted by the Tenant. The Landlord states that as no finding could be made that both Tenants were equally entitled to quiet enjoyment of their rentals. The Landlord stated that in June, the Tenant was offered another rental unit by the Landlord in a non-smoking building, but refused. The Tenant stated in her direct testimony that although she only just starting smoking when she moved into this building that her ability to smoke was more important than her personal safety in reference to the offer to move made by the Landlord. Both parties also agreed that the Landlord has offered assistance in the form of counselling services in the hope of mediating any issues. Both parties have refused such assistance.

The Landlord has submitted a copy of a letter from the Tenant's witness, W.W. who has recanted previous statements made. The Tenant states that the witness, W.W., is easily influenced and cannot be relied upon. The Landlord states that as this is the Tenant's witness, the witness, W.W.'s evidence cannot be relied upon.

Analysis

Section 28 of the Residential Tenancy Act states,

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

In this matter, the Tenant has the burden of proof to show (on a balance of probabilities) that grounds exist to show that the Landlord was negligent in maintaining the Tenant's right to quiet enjoyment. It is also the responsibility of the Tenant to show the loss of use/value of the rental in their monetary claim.

I find based upon both the direct testimony and the submitted documentary evidence of both parties that the Tenant has failed in her application. The Tenant has failed to provide sufficient evidence that the Landlord was negligent in their actions. Both parties have provided evidence of differing testimony on the issues brought forward by the Tenant. Copies of the police reports as well as an email exchange with police clearly show that after an investigation the police and Landlord were unable to determine who was at fault during these events. In the absence of cause, the Landlord is unable resolve the situation. The Tenant's evidence consists primarily of incidents involving another Tenant. I find based upon the evidence provided that the Landlord has acted reasonably in responding to the Tenant's claims. In the absence of fault of both Tenants, the Landlord has offered to both parties the ability to move away from the other. Both parties have refused such assistance. The Landlord has further offered counselling which was also refused.

Section 7 of the RTA states,

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the Tenant has also failed to reasonably minimize any damage or loss. The Tenant has also failed to provide sufficient evidence to show how a loss of the \$700.00 (monthly rent) which equals to a 100% loss of use of the entire rental.

The Tenant's application is dismissed for lack of sufficient evidence to show any negligence on the part of the Landlord.

Conclusion

The Tenant's monetary 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: October 19, 2012.

Residential Tenancy Branch