



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, CNC

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and the witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is an application for an order to cancel a notice to end tenancy that was given for cause, and an application for a monetary order for \$5,911.79; however at the beginning of the hearing I inform the tenant that I could not deal with both issues on the application as they were not related, and therefore he chose to deal with the monetary order at this time and file a separate application to dispute the notice to end tenancy

I therefore deal with the monetary claim below, and the request to cancel a notice to end tenancy is dismissed with leave to reapply.

Background and Evidence

The tenant testified that:

Loss of quiet enjoyment

- He is asking for the return of 75% of the rent he paid for the months of January 2012 through June 2012 due to the landlord's failure to deal with harassment from the tenant living above them.
- They were tormented for months on end by the tenant who lived above them and requests to the landlord to resolve the issue were ignored.
- They had garbage dump on their doorstep, peanut butter in their mailbox, profanities written on their mailbox, boiling hot water thrown over the balcony, feces thrown over the balcony, the tenant above would lean over and take pictures of their living room, she would turn her radio on high volume, yelling, screaming, dropping golf balls repeatedly on the hardwood floor until late at night.
- When they complain to the landlord about the problems they were laughed at and told to ignore it or get over it, or move.
- Since the landlords failed to deal with the issues they believe that they had a loss of quiet enjoyment equal to 75% of rent paid.

Reimbursement for repairs to apartment 207

- When they moved into apartment 207 the apartment was in extremely poor condition and as a result they did extensive repairs to the rental unit.
- One day when the landlord was in the apartment she was very impressed with the work that had been done and she stated that she would pay for all materials and labour for the work that he had done.
- Later when he presented the landlord with his bill, she only paid a portion of the materials, and refused to pay anything for labour.

- He is therefore asking for an order for the landlord to pay the remainder of the materials bill, and to also pay for his labour.

Reimbursement for repairs to balcony railings

- The balcony in the rental unit was in very poor condition and was a safety hazard, and as a result needed to be repaired.
- He told the landlord about the need for repairs however the landlord did not do the repairs, and therefore he did them himself.
- He believes it was a safety issue and therefore he should be reimbursed the \$160.00 for his time to repair the balcony railing.

The applicant's wife testified that:

- She was present when the landlord stated that she would pay her husband for the materials and labor for the renovations he did to suite 207.
- The landlord stated this on two separate occasions.

The respondent testified that:

Loss of quiet enjoyment

- She did have numerous complaints from these tenants about other tenants in the rental property; however she had more complaints from the other tenants about these tenants.
- She did try to resolve the issues and maintain quiet enjoyment of the property for all parties however it was difficult since each side was accusing the other of being the problem.
- She even attempted to call a meeting of the parties to try and resolve the issues however the applicants refused to attend that meeting.
- She does not know what else she could have done, especially since she was stuck in the middle and did not know who was the actual offending party,

although as stated above she had more complaints about the applicant and his wife then she had from them.

Reimbursement for repairs to apartment 207

- She never agreed at any time to pay the tenant for materials and labour for work he did in the rental unit.
- The only thing she ever agreed to pay for was for paint.
- The tenants did extensive renovations to this unit and did an excellent job, however those renovations were not required and as stated above I never agreed to pay for the work.
- Later when the tenants were about to move into the rental unit they owed rent totaling \$692.39 and therefore at that time she agreed to pay for a portion of the materials that the tenants to put in the rental unit in exchange for that outstanding rent.
- She only agreed to pay this amount against the rent, because the policy of the owners was that tenants could not move into a new suite if there was any rent outstanding.

Reimbursement for repairs to balcony railing

- The tenant went ahead and repaired the railing on the balcony without even notifying her that there was a problem with the railing or requesting that it be repaired.
- The tenant claims that he asked her to repair the railing, however this was never done. She had no idea the railing was in need of repair.

Analysis

It's my finding that the applicant has not established any monetary claim against the landlords.

Loss of quiet enjoyment

It is clear from the evidence presented by both sides that there was a significant amount of animosity between tenants at this rental property, however what is not clear is who if any of the tenants was most at fault.

In this case the landlord was basically stuck in the middle of a group of complaining tenants and I'm not convinced there was any negligence on the part of the landlord, and I will not hold the landlord liable for the tenant's loss of quiet enjoyment.

Reimbursement for repairs to apartment 207

It is my finding that the tenants have not met the burden of proving that the landlord ever agreed to pay for materials or labour for work done by the tenant on apartment 207.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case it is just the word of the two tenants against that of the landlord and that is not sufficient to meet the burden of proof.

Reimbursement for repairs to balcony railings

It is my finding that the tenant is not met the burden of proving that the landlord was ever informed that the railing needed repair.

Again it is just his word against that of the landlord and as stated above it is the applicant that has the burden of proving the claim, and when it is just the applicant's word against that of the respondent that burden is not met.

Conclusion

As stated above the request to cancel a notice to end tenancy that was given for cause is dismissed with leave to reapply.

The monetary portion of this claim is dismissed in full without leave to reapply.

Further since the tenant's monetary application has been dismissed I order that the applicant pay the filing fee of \$100.00, which was previously waived, to the director of the Residential Tenancy Branch

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: November 27, 2012.

Residential Tenancy Branch

