



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, OLC, RP, PSF, RR*

Introduction,

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for the loss of quiet enjoyment, harassment by the landlord, lack of heat during the day and for having to clean the shared bathroom. The tenant also applied for a rent reduction.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant filed this application on December 27, 2012 and stated that he forwarded his evidence package to the landlord on January 16. The landlord stated that he received the package on January 17 and did not have sufficient time to respond. Accordingly, the tenant's documentary evidence was not considered in the making of this decision. However, the verbal testimony of both parties was considered and used in the making of this decision.

Issues to be decided

Was the landlord negligent in responding to the tenant's complaints about noise disturbances? Did the landlord restrict heating to the rental unit? Did the tenant suffer a loss of quiet enjoyment? Is the tenant entitled to compensation?

Background and Evidence

The tenancy started on June 01, 2012. The monthly rent is \$500.00 and includes heat. The tenant shares a kitchen and bathroom with the other occupants of the rental unit.

The tenant stated that he was claiming compensation in the amount of \$1,300.00 for the following:

1. Heating that is turned off during the day since November 2012.
2. Noise disturbances from the other occupant of the shared residence.
3. Cleaning of the shared bathroom
4. Harassment by the landlord by serving the tenant with two invalid notices to end tenancy.

The tenant testified that the landlord turns off the heat between 1:00 and 4pm. The landlord testified that this matter was discussed at a prior hearing on October 29, 2012 and since then he has turned the timer off. He stated that the heating is on 24/7 and there is a thermostat in the tenant's room.

The tenant stated that a new tenant CH moved into the home on October 29 and has been causing noise disturbances. The tenant testified that CH is a drug addict and plays loud music and conducts loud conversations with friends at night. The tenant stated that during the month of November and December he spent several sleepless nights due to the disturbances caused by CH. The tenant wrote multiple complaints to the landlord, the first one on October 31, 2012.

The landlord stated that as soon as he received the complaints he gave CH a verbal warning which was followed up with a notice to end tenancy. CH's affairs are handled by a social worker who placed CH in this rental unit. The social worker requested additional time to relocate CH who has special needs. The landlord and the social worker signed a mutual agreement to end CH's tenancy on January 31, 2013.

The cleaning of the bathroom is the responsibility of the occupants of the rental unit. The tenant stated that the other occupants did not clean the bathroom and the entire job was left to him. He agreed that he did not notify the landlord.

The tenant stated that the landlord harassed him by serving him with two invalid notices to end tenancy. The first one was dealt with in a hearing and set aside. The landlord agreed that the second notice was issued in error. The tenant also testified that the landlord moved in a lady with two children and a dog that also caused noise disturbances. At the time of the hearing, they were no longer in residence.

The landlord stated that the tenant is a habitual complainer and is constantly looking for a way to gain financial compensation. The landlord stated that the tenant even suggested to him that with a payment of \$1,000.00 he would move out of the rental unit.

Analysis

Based on the sworn testimony of both parties, I find the following:

1. Heating

I prefer the landlord's testimony that the heating is on 24/7 and has been so since the last hearing on October 29, 2012.

The landlord stated that the timer is no longer in operation. Therefore I find that the tenant has not proven that the landlord is restricting heat to the rental unit.

2. Noise disturbances

Upon receiving the tenant's complaints, the landlord acted in a timely manner and gave CH warnings which were followed up by a notice to end tenancy. Therefore I find that the tenant has not proven negligence on the part of the landlord. However the tenant did suffer sleepless nights due to the noise disturbances and was inconvenienced by the activities of CH.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has and will exist. In this case the offending occupant will be moving out at the end of January. I find it appropriate to award the tenant a nominal award of \$100.00. The tenant may make a onetime deduction of \$100.00 from a future rent.

3. Cleaning of the shared bathroom

Since the accommodation is shared, it is the responsibility of the occupants to clean the shared bathroom. If the other occupant was not doing his share, the tenant should have informed the landlord. The tenant agreed that he had not informed the landlord. Therefore I find that the tenant is not entitled to compensation for the extra cleaning he has done.

4. Harassment

Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".

The tenant stated that the landlord harassed him by serving him with two invalid notices to end tenancy. The landlord agreed that one of the notices was a mistake. Even though the notice may have caused the tenant some anxiety, I find that the actions of the landlord do not fit the definition of harassment.

The tenant occupies a rental unit that is shared by other occupants. Therefore he must be prepared to accept that the shared areas may not be cleaned or maintained by other occupants, to his standards.

Based on the testimony of both parties, I find that the tenant has not proven his case for compensation in the amount of \$1,300.00. He has also not proven his claim for a rent reduction. However as stated above, I award the tenant a nominal award of \$100.00 for the inconvenience endured as a result of noise disturbances.

Conclusion

The tenant may make a onetime deduction of \$100.00 from a future rent.

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: January 24, 2013

Residential Tenancy Branch

