



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, CNR, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed, pursuant to Section 67;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46;
- Monetary compensation in the form of a rent abatement for loss of quiet enjoyment

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

At the outset of the hearing the parties advised that the tenant had vacated the unit on December 22, 2012. Therefore the matter of terminating the tenancy or issuing an Order of Possession is now moot. However, both parties wish to proceed with respect to their monetary claims.

Issue to be decided

The remaining issues are:

- Is the landlord entitled to compensation for rental arrears?

- Is the tenant entitled to a retro-active rent abatement for loss of quiet enjoyment of the suite?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started in July 2012 with rent of \$700.00 per month plus \$10.00 parking. A security deposit of \$350.00 was paid.

Evidence submitted included a copy of the Ten Day Notice to End Tenancy for Unpaid Rent dated December 4, 2012, a copy of the tenancy agreement, copies of communications, invoices and proof of service.

The landlord testified that the tenant failed to pay \$710.00 owed for the month of December 2012 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued and served on December 4, 2012. The landlord testified that the tenant vacated the rental unit on December 22, 2012. The landlord is claiming \$710.00 for the rental arrears and an additional amount for the cleaning and unpaid utilities.

The tenant did not dispute that the rent for December was unpaid and the tenant is in agreement that the landlord is entitled to this rent.

With respect to the tenant's monetary claim for a rent abatement, moving costs, accommodation and loss of wages totaling \$800.00, the tenant testified that they had given a written Notice to End Tenancy to the landlord on November 30, 2012 due to excessive noise from a dog kept in an adjacent unit and also noise from a dog in the apartment above theirs. The tenant testified that there were no dogs allowed in the building and that the landlord did not enforce the policy, resulting in the tenant's losing quiet enjoyment of their suite. The tenant testified that, in November 2012, he mentioned the problem to the on-site manager as the frequency of the barking was increasing due to non-residents being allowed free access into the complex through propped-open security doors. The tenant testified that no written complaints were sent to the landlord about the dog barking.

The tenant is attributing the landlord's refusal to enforce the pet policy to be a violation of the Act by the landlord and stated that this was the reason that they felt forced to terminate their tenancy. The tenant's position is that the landlord should be held responsible for the resulting moving costs incurred by the tenants for their move and also should be liable to pay compensation for loss of quiet enjoyment they suffered due to the ongoing racket from the dogs.

The landlord disagreed with the tenant's testimony and stated that the tenant was not forced to move because of interference with their quiet enjoyment. The landlord

testified that the tenancy was validly terminated by the landlord in accordance with the Act because the tenant failed to pay his rent when it was due.

The landlord testified that the tenant had not lodged any previous complaints about the dog noise until after he had already defaulted on the rent.

The landlord testified that they investigated the tenant's complaint about noise and found that the person living in the unit above the tenant did not own a pet dog.

The landlord stated that the other dog living in the adjacent suite was small and the barking, if any, would not significantly disturb the quiet enjoyment of neighbours in the adjacent units.

The landlord pointed out that they had never received any complaints from other residents about noise from dogs and the landlord went so far as to question other nearby residents about the alleged disturbances from the dog. The landlord testified that the tenant should not be entitled to any of the costs being claimed.

Analysis:

Landlord's Claims

In regard to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

If the tenant does not pay rent when it is due, the landlord can issue a Notice to End Tenancy for Unpaid Rent under section 46 of the Act. In this instance, I find that the tenant did not pay rent and a Ten Day Notice to End Tenancy for Unpaid Rent was issued, after which the tenant did vacate the rental unit.

I find that the landlord is entitled to be compensated for the outstanding rental arrears of \$710.00.

In regard to the remainder of the landlord's monetary claims, I find that the landlord has not submitted evidentiary proof that the outstanding utilities were actually paid by the landlord. Therefore, this portion of the landlord's claim is dismissed. In regard to the carpet cleaning, I find that, although the landlord submitted a copy of an invoice to verify the costs of carpet cleaning, there were no move-in or move out condition inspection reports in evidence to support this claim. I find that this portion of the landlord's application must be dismissed.

Tenant's Claims

In regard to the tenant's claim for compensation for having to relocate, I find that the applicant's right to claim damages from another party is dealt with in section 7 of the Act which states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the monetary claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that reasonable steps were taken to mitigate or minimize the loss or damage in compliance with section 7(2) of the Act.

I find that the tenancy did not end because of a violation of the Act by the landlord. Therefore the tenant's monetary claim seeking compensation for the moving costs, loss of wages and accommodation all fail to satisfy element 2 of the test for damages. The tenant's claim also failed to meet the criteria required under element 3 of the test for damages. Accordingly, I find that the portion of the tenant's claim seeking costs associated with moving must be dismissed.

In regard to the tenant's claim for a retroactive rent abatement, based on the allegation that the tenancy was devalued by the noise from dogs, I find that the applicable section of the Act is section 28 which protects a tenant's right to quiet enjoyment and states that 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.

I find that the burden of proof is on the tenant to show that a rental abatement is justified based on unreasonable disturbances due to noise. I accept the tenant's verbal testimony that the dog barking could be heard and was likely annoying. However, to justify a reduction on rent based on loss of enjoyment, I find it is not enough to establish that noise can merely be heard from one suite to another.

I find that the tenant should be prepared to provide evidence proving significant interference of an unreasonable duration, frequency and volume.

I note that the perception of what level of noise is "reasonable" can be influenced by the sensitivity or subjectivity of a particular occupant and exposure to noise between units can depend upon the age and structure of the building in relation to how sound carries or what floor covering is used. The fact is that some complexes are more sound-proof than others. There is also no standard test to determine what constitutes a significant disturbance.

In any case, I find that the tenant did not lodge any written complaints with the landlord about the barking, to give the landlord an opportunity to monitor this noise. Moreover, I find that the tenant made general reference to the disturbances, but neglected to provide important details such as the nature of the disruption, including the times and dates that the tenant felt his tenancy was being unreasonably disturbed.

Given the above, I find that the tenant is not entitled to any rent refund for the devaluation of the tenancy due to the alleged loss of quiet enjoyment. I find that the tenant's monetary claim for compensation must be dismissed.

I find that the landlord is entitled to total monetary compensation of \$760.00 comprised of \$710.00 rental arrears and the \$50.00 cost of the application. I order that the landlord retain the tenant's \$350.00 security deposit in partial satisfaction of the claim, leaving \$410.00 still outstanding.

I hereby issue a monetary order in favour of the landlord for \$410.00 which must be served on the tenant in person or by registered mail. This decision and order is final and binding and may be enforced through Small Claims Court if necessary.

The tenant's application is dismissed in its entirety, without leave to reapply.

Conclusion

The landlord is partially successful in the claim and the tenant's application is dismissed without leave.

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 15, 2013

Residential Tenancy Branch

