



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Noble & Associates
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord has made an application for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss and recovery of the filing fee. The Tenants have also made an application for a monetary order for money owed or compensation for loss, the return of the pet damage and security deposits and recovery of the filing fee.

Both parties have attended the hearing by conference call have given testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and evidence submitted by the other party, I am satisfied that both parties have been properly served.

The Landlord has amended the monetary claim for the utilities portion from \$452.57 to \$231.32 as he is now in possession of the invoices. The Tenant has conceded this portion of the claim as they have only recently received the invoices for these utilities.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

This Tenancy began on March 10, 2012 on a fixed term tenancy ending on March 31, 2013 as shown by the submitted copy of the signed tenancy agreement. Both parties agreed that the Tenancy ended on October 31, 2012. The monthly rent was \$6,000.00 payable on the 1st of each month and a security deposit of \$3,000.00 and a pet damage deposit of \$3,000.00 were paid on February 29, 2012. Both parties agreed that the Landlord currently holds the \$6,000.00 in combined pet damage and security deposits.

The Landlord seeks a monetary claim of \$9,822.17. This consists of \$9,000.00 for a liquidated damages, \$231.32 in utilities and \$369.00 for a plumbing charge. The Tenant has conceded the utility charges as they were not previously unknown to them, but disputes the Landlord's two remaining claims.

The Landlord refers to section 13 of the signed tenancy agreement which states, "The Tenant agrees not to sign or sublet the premises without the Landlord's written permission and consent. If Tenant terminates the Agreement, or causes the Landlord to terminate the Agreement by breaching the its terms, before the expiry date, the Tenant agrees to give the Landlord **5 weeks prior written notice and Liquidated damages of one and one half months (1 ½) rent** to the Landlord for reletting expenses and rental loss." The Landlord states that this is a standard condition of 1 ½ months rent for liquidated damages in all of their tenancy agreements regardless of the monthly rent.

Residential Tenancy Branch Policy Guideline #4 states, "A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. **The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.**" I find that the clause entered into by both parties to not be a genuine pre-estimate of loss. The Landlord has not provided an actual amount of loss for advertising or any other costs incurred for reletting the rental. The Landlord has stated that they have posted on craigslist and their own company website as their reletting efforts. I find that the Landlord's liquidated damages clause constitutes as a penalty clause and is not enforceable. The Landlord's application for liquidated damages is dismissed.

The Landlord also seeks \$369.60 in plumbing costs based upon an invoice from Lew Plumbing and Heating Ltd. for plugged toilets caused by the negligence of the Tenant. The Tenant disputes the claim. The Landlord states that the plumber was dispatched upon a complaint received from the Tenant of plugged toilets. The Plumber's invoice states that the toilets were plugged and upon inspection, "found a whole carrot and 2" ball bearing in lodge at base, removed, reset toilet...Basement water closet has alot of cotton q tips in it causing strainer effect all lodged at base..." The Landlord states that based upon the plumbers invoice details the Tenant must be found to be negligent. The Tenant disputes this stating that the causes must be the responsibility of the previous Tenants, but have not provided any evidence of such. The Tenants state that the plumbing invoice was for other jobs on site, but upon review of the invoice, I find that the work performed was solely for inspections of all of the toilets with work performed on only two toilets. The invoice shows the \$10.00 charges for two wax seals and the remaining charges for labour. I find on a balance of probabilities based upon the plumbers invoice that the Landlord has established a monetary claim for the plumbers invoice of \$369.90.

The Tenant is seeking a monetary claim of \$21,000.00. This consists of \$15,000.00 for the loss of quiet enjoyment for approximately a 2 ½ month period of the beginning of the Tenancy, the return of the pet damage deposit of \$3,000.00 and security deposit of \$3,000.00. The Tenants state that the rental was not ready to move in and should have had everything working prior to advertising it for rent. The Tenants cite poor communication with the Landlord and the Owners of the Property. The Tenants report that repairmen would attend without notice daily to make repairs, but were unable to communicate with the Tenants. The Tenants state that the repairmen that would attend would have to return two or three times to fix the same problem. The Tenants also states that she suffered panic attacks and daily anxiety about a flying ant infestation.

The Landlord disputes the Tenant's claim stating that the house is old and that the Tenants were aware of its condition when they inspected it prior to moving in as shown by the copies of emails submitted. The Landlord further states as noted in the tenancy agreement that a condition inspection report was completed by both parties and repairs were noted and would be resolved. The Landlord states that the rental was properly maintained and that Tenant's issues relate to the Landlord's attempts to continued maintenance of the rental. The Landlord states that they responded reasonably to all concerns brought forward by the Tenant.

Residential Tenancy Branch Policy Guideline #6 states, "**Basis for a finding of breach of quiet enjoyment**

Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of: · entering the rental premises frequently, or without notice or permission;"

The Tenant's have equated the claim amount to equal 2 ½ months rent without providing any supporting evidence to reflect the claim. The Tenants cite poor communication, incompetent repairs by the Landlord/Owner that caused them a loss of quiet enjoyment. The Landlord has stated that the rental was in an "as is" condition that the Tenant was aware of based upon the condition inspection report completed by both parties and confirmed within the addendum to the tenancy agreement.

I find that the Tenant's have not established a claim for the \$15,000.00 monetary claim sought, but it is clear that there was a "frequent and ongoing interference" by the Landlord's repairmen that would constitute an unreasonable passage of time for the repairs to be completed. The Tenants have failed to provide sufficient evidence to satisfy me on their monetary claim, but I find nominal award of \$1,500.00 for the 2 ½ month period that would equal 10% of the monthly rent.

The Tenants have established a total monetary claim of \$7,500.00 which consists of the \$1,500.00 in the loss of quiet enjoyment and the return of the combined pet damage and security deposits of \$6,000.00. The Landlord has established a total monetary claim of \$601.22. As both parties have been successful in their monetary applications, I decline to make any order for the return of filing fees for either party.

I order that the Landlord retain \$601.22 from the Tenant's combined pet damage and security deposits and return the remaining \$5,398.78 and give to the Tenants the \$1,500.00 monetary claim for the loss of quiet enjoyment. The Tenants are granted a monetary order for \$6,898.78. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord has established a monetary claim for \$601.22.

The Tenant has established a monetary claim for \$7,500.00.

The Tenant is granted a monetary order for the difference of \$6,898.78.

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: March 1, 2013

Residential Tenancy Branch

