



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, LRE, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation for loss or damage under the Act, to have the landlord comply with the Act, and suspend or set condition on the landlord's right to enter the unit and the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary Issues

At the outset of the hearing the parties agreed the tenancy is ending on April 30, 2013. The parties agreed that the move-out condition inspection will be conducted on April 30, 2013, at 1:00 pm.

The parties furthered agreed that landlord can enter the unit on April 23, 2013, at approximately noon hour to show the unit. The parties agreed that the landlord will provide the tenant with 24 hours notice to enter the unit for any other dates, as required by the Act.

Issue to be Decided

Is the tenant entitled to monetary compensation for loss or damage under the Act?

Background and Evidence

The parties entered into a tenancy agreement which began on February 1, 2013. Rent in the amount of \$800.00 was payable on the first of each month. A security deposit was not required to be paid. The parties agreed that the tenancy is ending on April 30, 2013.

The tenant claims as follows:

a.	Money owed or compensation for damage or loss	\$1,600.00
b.	Recover filing fee	\$ 50.00
c.	Total claimed	\$1,650.00

The tenant testified that there have been very loud parties in one of the other rental units. The tenant stated she has also heard loud sex noises coming from the same unit. The tenant stated she verbally told the landlord.

When the tenant was question on specific dates of these alleged noises, the tenant could not provide any further detail, except every weekend.

The landlord denied that there have been any loud parties or loud sex noises and alleged that the tenant is merely making up stories. The landlord stated they have never received any complaints from the tenant.

The tenant testified that the other tenant has a dog that barks for hours. The tenant stated she verbally told the landlord.

The landlord testified that other tenant had purchased a puppy on March 24, 2013, and on occasion the puppy has made whining noises. The landlord denied it goes on for hours. The landlord stated the tenant has never complained about the puppy.

The tenant testified that landlord tried to force her into signing a new tenancy agreement, which would increase the rent by \$300.00. The tenant stated she did not sign the new agreement as she could not afford to pay more rent. The tenant stated the landlord also threatened to throughout her belongings out.

The landlord testified that when the tenant entered into the tenancy agreement, the economical rent was significantly lowered because of the tenant's circumstances and that fact that she was also a care provider. The landlord denies any attempt to force the tenant into entering a new agreement or threatening to throughout her belongings. The

landlord stated the only conversation she had with the tenant was to let her know when the fixed term expired in August 2013 that the rent would be increased.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the tenant has the burden of proof to prove their claim.

The evidence of the tenant was that the other tenant was having loud parties and making loud sex noises. The evidence of the tenant was she verbally complained to the landlord. The evidence of the landlord was the tenant is making up stories and she has never received any complaints from the tenant. I find in the absent of any further evidence from the tenant, such as written letters of complaints. I find the tenant has failed to prove a loss existed or a violation of the Act by the landlord.

The evidence of the tenant was that the other tenant had a dog and the dog barks for hours. The evidence of the landlord was that the other tenant had just added a puppy to their household and that on occasion the puppy was making whining sounds. The landlord denied the puppy barks for hours. The landlord further denied receiving any complaints for the tenant.

Even if I accept the tenant's version which I do not, the puppy moved into the other occupants unit on March 24, 2013. The tenant's filed their application for dispute

resolution on March 25, 2013. I find that even if the tenant provided the landlord with notice on March 24, 2013, which I do not, the landlord was entitled to investigate the complaint and rectify the problem within a reasonable amount of time. Therefore, I find the tenant has failed to prove a violation of the Act by the landlord.

The evidence of the tenant was the landlord attempted to force her to sign a new tenancy agreement. The landlord denied that claim. Even if I accept the evidence of the tenant, that the landlord was attempting to change the tenancy agreement by entering into a new agreement. I find the tenant has failed to prove a loss exist as she did not enter into any new agreement and the tenancy remained the same. Therefore, I dismiss this portion of the tenant's claim.

In light of the above, the tenant's entire application is dismissed without leave to reapply. The tenant is not entitled to recover the cost of filing the application.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: April 25, 2013

Residential Tenancy Branch