



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; OLC; RR; FF

Introduction

This is the Tenant's application for compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order that the Landlord comply with the Act, Regulation or tenancy agreement; a reduction in rent; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Notice of Hearing documents and copies of the Tenant's documentary evidence were mailed to the Landlord, by registered mail, on April 15, 2013.

It was determined that the Landlord also provided the Tenant copies of his documentary evidence by registered mail, sent April 22, 2013.

Issues to be Decided

- Is the Tenant entitled to compensation pursuant to the provisions of Section 67 of the Act?
- Is the Tenant entitled to a rent reduction pursuant to the provisions of Section 65(1)(f) of the Act?
- Should the Landlord be ordered to comply with Section 28(b) of the Act and provide the Tenant with quiet enjoyment of the rental unit?

Background and Evidence

The rental unit is one of two rental units in a house. The Tenant lives in the upper unit. The lower unit is occupied by other renters. The Tenant's tenancy began on November 1, 2006. Current monthly rent is \$1,598.67. The Tenant paid a security deposit in the amount of \$700.00 at the beginning of the tenancy.

On March 5, 2013, the parties attended a Dispute Resolution Hearing (the “Previous Hearing”). A Decision was rendered with respect to the Previous Hearing on March 8, 2013. A copy of that Decision was provided in evidence. In that Decision, the Arbitrator found that the Tenant suffered a loss of quiet enjoyment due to the downstairs occupants smoking cigarettes and marijuana in the downstairs rental unit and on the common areas of the rental property. The Landlord was ordered to comply with Section 28 of the Act and ensure that the Tenant has quiet enjoyment of his rental unit.

The Tenant filed his Application for Dispute Resolution on April 12, 2013. He stated that the Landlord did not issue a Notice to End Tenancy with respect to the downstairs occupants. The Tenant stated that on March 14, 2013, a friend of the downstairs occupant’s banged on the windows and doors of the downstairs rental unit for 2 hours. He stated that the downstairs occupants were selling marijuana from the downstairs rental unit, and that visitors were entering and exiting the downstairs rental unit through the kitchen window. The Tenant submitted that this was a security risk.

The Landlord’s agent testified that the downstairs occupants complained about the Tenant on March 28, 2013, and that on April 11, 2013, the downstairs occupants entered into a mutual agreement with the Landlord to end their tenancy effective May 31, 2013. The Landlord’s agent stated that when the downstairs rental unit is re-rented, the tenancy agreement will clearly stipulate that the rental property is “non-smoking”.

The parties discussed other issues which are not relevant to the Tenant’s application, such as lack of soundproofing in the rental property; a noisy fan; problems with a fuse tripping; and rules with respect to use of the common laundry area.

Analysis

Section 65(1)(f) of the Act states:

65 (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

The Tenant did not apply for this specific relief in the Previous Hearing, but the Arbitrator found that, “the upstairs tenant has suffered a reduction in the quiet

enjoyment of his rental unit because of the significant amount of cigarette and marijuana smoke or odour in the upper unit, caused by the downstairs tenants' smoking".

However, I find that the Tenant did not provide sufficient details during this Hearing of his loss of quiet enjoyment (for example: how often in the past the Tenant and his family were affected by smoke from the downstairs occupants) to support his claim for a **rent reduction**. In addition, the Tenant did not provide an amount for consideration with respect to rent abatement.

The tenancy with the downstairs occupants is ending and therefore I find that an Order the Landlord comply with Section 28 of the Act is no longer required. This portion of his application is dismissed.

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, regulations or tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. The Tenant seeks compensation under Section 67 of the Act, in the amount of \$5,000.00 for loss of peaceful enjoyment of the rental unit.

The Landlord did not provide any explanation for why he did not issue a One Month Notice to End Tenancy upon the downstairs occupant when he received the Arbitrator's Decision of March 8, 2013. A One Month Notice to End Tenancy, if provided to the downstairs occupants on or before March 31, 2013, would have been effective April 30, 2013. Instead, the Landlord entered into a mutual end of tenancy agreement with the downstairs occupants effective May 31, 2013. I find that the Landlord did not act expeditiously in carrying out the Arbitrator's Order of March 8, 2013, and that the Tenant is entitled to compensation. However, I find the amount of compensation that the Tenant is seeking is unreasonable.

Compensation cannot be provided in advance. This matter was heard on May 9, 2013, and I find that I cannot award the Tenant compensation for loss of quiet enjoyment for the period of May 9 to 31, 2013. Section 67 of the Act provides me with the authority to determine the amount of compensation the Tenant is entitled to from the Landlord. I find that the Tenant is entitled to a nominal amount of **\$50.00**.

The Tenant's application had some merit and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Pursuant to the provisions of Section 72(2)(a) of the Act, I order that the Tenant may deduct his monetary award in the total amount of **\$100.00** from future rent due to the Landlord.

Conclusion

The Tenant has established a monetary award in the amount of **\$100.00**, which I order that the Tenant may deduct from future rent due to the Landlord.

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: May 14, 2013

Residential Tenancy Branch