



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gateway property Mgmt. Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, ERP, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover his filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that on May 17, 2013, the landlord left a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) under his door. The landlord confirmed that on May 22, 2013, the tenant handed a copy of the tenant's written notice to end this tenancy by May 31, 2013 to the landlord. The landlord testified that on May 15, 2013, the tenant sent a copy of his dispute resolution hearing package to the landlord by fax. I am satisfied that the parties received one another's documents and their written evidence packages so as to be able to prepare for this hearing. I was unable to consider a letter that the tenant said he had available at the time of this hearing as he had not served this letter to anyone in advance of this hearing.

As the tenant vacated the rental unit by May 31, 2013 and returned his keys to the landlord at that time, the tenant withdrew his applications for the issuance of an order against the landlord and for emergency repairs to the tenant's rental unit. Both of these portions of the tenant's application for dispute resolution are withdrawn.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses and damage arising out of this tenancy? Is the tenant entitled to recover his filing fee from the landlord?

Background and Evidence

This tenancy began as a six-month fixed term tenancy on April 1, 2011. At the expiration of the initial term, this tenancy converted to a periodic tenancy. By the end of this tenancy, monthly rent was set at \$805.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$402.50 security deposit.

The tenant applied for a \$4,000.00 monetary award for the loss in value of his tenancy. The tenant claimed that the value of his tenancy had been devalued by the use of marijuana and illegal harder drugs by tenants in a nearby rental suite. He maintained that the landlord had allowed two separate sets of tenants to remain in their tenancies close to his rental unit. The tenant maintained that his health had been affected by the landlord's failure to address his concerns in an adequate way.

The tenant entered into written evidence two medical certificates from his doctor dated March 10, 2013 and April 5, 2013. The first of these certificates stated that the tenant needed to sleep 8 hours per night and keep his legs raised as he sleeps. The second certified that the tenant "has allergic conjunctivitis, possibly made worse by any number of things including dust, pollen, other allergies, or cigarette/marijuana/drug smoke." The tenant also submitted his own written description of his efforts to obtain action regarding his long-standing concerns that other residents of his building have been using drugs that are affecting his health. He noted that he is 73 years of age and is supposed to be on a specialized machine he could not use because of the smoke filtering into his rental unit from other suites in his multi-unit rental building. He also supplied an unsigned and undated letter from another tenant in this building who confirmed the tenant's claim that there was the smell of marijuana and other drugs coming from other rental units in this building. The tenant claimed that the air quality became so bad in his building that he had to sleep in his car for a 9-night period, stayed in a motel for another 8 nights, and then returned to living in his car for the final days of his tenancy.

The landlord confirmed that the tenant has raised frequent complaints about drug use in this building. The landlord testified that he has visited the premises a number of times himself to follow up on the tenant's complaints. He testified that the building manager has inspected the premises on many occasions and has even gone to the roof of the building to see if there was any evidence that could be obtained to confirm the tenant's allegations. He said that the tenant called the building manager so many times that the manager eventually suggested that he call the police instead. Both parties agreed that neither the police nor the landlord's representatives have been able to identify any wrongdoing by the tenants identified by the tenant as the source of the problem. The tenant attributed this to the delays involved in having anyone from the police or the landlord's office attend the rental premises to check out his allegations.

The landlord testified that the tenant had become such a nuisance with his complaints that others in the building started complaining about his behaviours related to his concerns about drug use in this building. The landlord entered into written evidence three letters from tenants to this effect. The landlord testified that the tenant's actions in this regard had led to one tenant ending a tenancy. When the tenant's concerns continued unabated, the landlord sent the tenant a 1 Month Notice for Cause, as other resident's rights to quiet enjoyment were being compromised by the tenant's unsubstantiated campaign against other tenants in this building. The landlord noted that he did not insist on receiving any June 2013 rent payment from the tenant, even though the tenant's notice to end this tenancy before June 1, 2013 was submitted late.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the tenant bears the burden of proving is entitlement to the monetary award he has requested.

As outlined below, section 28 of the *Act* provides tenants with a right to quiet enjoyment of their tenancy:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;...

While the tenant has made allegations about two different sets of tenants who have resided near him in this multi-unit rental building, his own sworn testimony and written evidence forms the basis for his claim for a monetary award for the loss in value of his tenancy and his loss in quiet enjoyment. He did not produce witnesses to verify his concerns. The tenant's only written evidence from anyone else was a short handwritten and unsigned statement. I attach very little weight to this type of unsigned and undated document. While he referred to many calls to the police leading to five or six visits to the building by the police, he produced no evidence to refute the landlord's claim that

the police never found any evidence of drug use at the premises identified as the source of the problem by the tenant.

Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but cannot take action when, by the tenant's own admission, little evidence is available to substantiate his claims by the time anyone attended the premises to follow up on his concerns. I find insufficient evidence to demonstrate that the landlord has failed to take appropriate action to follow up on the tenant's concerns about his neighbours.

Under these circumstances, I find on a balance of probabilities that the tenant has fallen far short of demonstrating that he is entitled to any form of monetary compensation from the landlord for a loss in the value of his tenancy or of a loss in his quiet enjoyment of the rental building. Other than his own claims, the tenant was unable to produce anyone who was willing to lend support to his allegations or even to sign a document attesting to the credibility of the tenant's claim. Rather, it would seem that the tenant became fixated on his account of why he was feeling poorly. While this may have been helpful to the tenant, it does not entitle him to obtain a monetary award against the landlord for a problem that others have not witnessed. For these reasons, I dismiss the tenant's claim without leave to reapply.

Conclusion

The tenant's application for the issuance of an Order against the landlord requiring the landlord to comply with the *Act* and for emergency repairs are both withdrawn. I dismiss the remainder of the tenant's application 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: June 10, 2013

Residential Tenancy Branch

