



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants CNR, MNDC, OLC, FF

For the landlords – OPR, OPC, OPB, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to cancel a Notice to End Tenancy for unpaid rent or utilities, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, and to recover the filing fee from the landlords for the cost of this application. The landlords applied for an Order of Possession for unpaid rent or utilities, for cause and because the tenants breached an agreement with the landlords; for a Monetary Order for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

One of the tenants and the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing the landlords advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the applications for an Order of

Possession. The tenant attending withdrew their application to cancel the 10 Day Notice and for an Order for the landlord to comply with the *Act*.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords entitled to a Monetary Order for unpaid rent or utilities?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on March 15, 2012. The tenancy ended on July 20, 2013. Rent for this unit was \$650.00 and this was increased to \$710.00 on June 30, 2013. The tenants paid a further amount of \$30.00 for cable and internet services. Rent was due on the last day of each month in advance. The tenants paid a security deposit of \$350.00 and a pet deposit of \$350.00 on March 15, 2012.

The landlord TB testifies that the tenants failed to pay Rent or utilities for July, 2013 to an amount of \$740.00. A 10 Day Notice to End Tenancy was served upon the tenants on July 04, 2013 in person. This Notice informed the tenants that they had five days to either pay the rent or dispute the Notice or the tenancy would end on July 14, 2013. The landlord testifies that no rent was paid and the tenants vacated the rental unit without informing the landlords on July 20, 2013.

The landlords seek to recover the unpaid rent and utilities for July of \$740.00. The landlord testifies that they have advertised the unit for rent and it remains unrented as of the day of the hearing. The landlords therefore seek to recover a loss of rental income for August of \$710.00.

The tenant disputes the landlords' claims for unpaid rent for July. The tenant agrees that they did not pay the rent for July on the day it was due but testify that they had an agreement with the landlords to pay rent on the 4th day of the month because that was the day the male tenant got paid. The tenant agrees that they did not pay rent on July 04, 2013 because the landlord handed the tenant a One Month Notice to End Tenancy on that date with a 10 Day Notice. The tenant testifies that they had already given the landlords written notice to end the tenancy by letter on June 05, 2013 and had informed the landlords that they would be moving out on July 31, 2013. A copy of the tenants notice has been provided in evidence.

The tenant testifies that they had given notice to the landlord due to the harassment, bullying and loud music and drums. The landlords shut of the Hydro and laundry and threatened to tow the tenants' truck. The tenant testifies that they wrote to the landlord informing them that they would not be paying the rent for July.

The tenant testifies that the landlords have also increased the rent illegally. The amount of rent should have only been increased by 2.3 percent however the landlords increased it by \$60.00. The tenants also dispute the landlords claim for a loss of rent for August, 2013 as they had given the landlords notice in June due to the landlord's threats against the male tenant. The tenant testifies that they would have paid Julys rent if the landlords had not harassed and bullied the tenants.

The landlords dispute that they have harassed or bullied the tenants.

The tenants seek to recover a month's rent for June as the tenant JM testifies that they lost their right to quiet enjoyment. The tenant testifies that they had to drive around at night to get away from the loud noise created by one of the landlords daughters who was talking on her phone and using her computer, stomping and banging until 2.00 am. The tenant testifies that she spoke with the male landlord who said he would speak to his daughter about the noise. The tenant testifies that she spoke to the landlord about this up to and including June 05, 2013 however the situation did not improve. The

landlords also started to do renovations. A new roof was done which took two days; new flooring was put down in the landlords unit above the tenants and a new kitchen. This work continued for months. The tenant testifies that the basement door opens onto the landlords shop and the landlord would carry on work in the shop with constant sawing noise starting around 6.15 a.m. and finishing around 8.00 p.m. The tenants' seek to recover rent paid for June of \$650.00 plus the security and pet deposit of \$700.00.

The landlord disputes the tenants' claims. The landlords testify that the noise with their daughter did occur for two nights once in March and once in May it did not go on for months and they spoke to their daughter and resolved that problem. The noise is only normal living noise. The landlord testifies that the reason the tenants did not come home to their unit in July was because they were avoiding the landlords because they owed rent and not because of any noise issues. The landlord testifies that the roof repair took a day and was essential to the maintenance of the property and the tenants were given written prior notice. The flooring was also put down on one Saturday evening from 4.00 p.m. to 8.00 p.m. The landlords' testify that they did not replace their kitchen but only painted it..The landlords have provided a letter from the roofing company which states the day the work took place and the times they started and ended in compliance with the bylaws.

The landlords testify that on one occasion they had some friends over and they did play some loud music. The tenants called the bylaw officer who came out and asked the landlords to turn the music down which the landlord immediately complied with.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the tenant attending the hearing agrees they did not pay rent and withheld rent for July due to harassment and noise from the landlords. As s. 26 of the *Act* does not allow a tenant to withhold rent I find the landlords are entitled to recover unpaid rent for July. However, a landlord must only increase rent in line with the amount specified each year. For 2013 the amount is actually 3.8 percent not the 2.5 percent mentioned by the tenants. Therefore I find the landlords did increase the rent to an amount over and above the allowable amount for 2013 and I have adjusted the landlords claim for rent accordingly. The landlords' are entitled to increase the rent to **\$674.70** and therefore this is the amount due for rent for July plus utilities of **\$30.00** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for a loss of rent for August; I find the tenants had given the landlord written notice to end the tenancy in June. The landlords would therefore have been aware of the tenants' intention to leave the rental unit on July 31, 2013 and could have started to advertise the unit for rent prior to that date. As the landlords did not start to advertise the unit until after the tenants had vacated I find the landlords did not try to mitigate the loss for rent for August pursuant to s.2(2) of the *Act*. The landlords claim for a loss of rent for August is therefore dismissed.

As the landlords have been partially successful with their claim I find the landlords are entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*.

With regard to the tenants claim for compensation for a loss of quiet enjoyment; I refer the parties to the s. 28 of the *Act* which states:

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.*

The Residential Tenancy Policy Guidelines # 6 provides more clarification on this matter and states, in part, 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.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises; however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenants have not provided any independent evidence to corroborate her testimony that the noise from the landlords unit was anything more than normal living noise or that the noise was frequent or ongoing. Furthermore I find the tenant has not shown that the noise from renovations to the roof and flooring were such that was it was anything more than temporary discomfort or inconvenience as a landlord does have the right to carry out repairs and maintain their property and these repairs took place over a short time period.

Consequently I find the tenants have not met the burden of proof that would warrant compensation for a loss of quiet enjoyment and this section of the tenants claim is dismissed.

As the tenants have been unsuccessful with their claim I find the tenants must bear the cost of filing their own application.

The tenants had also requested the return of their security and pet deposit. However the tenants did not apply for this on their application as it was removed by the tenants due to the fact at the time of applying the tenants were still residing in the rental unit. The tenants have not provided a forwarding address to the landlord prior to the hearing. Therefore I will not deal with the tenants request to recover their security and pet deposit.

However at the hearing the tenants did provide a forwarding address to the landlords. This address has now been documented by the landlords and is considered to have been received on this date August 12, 2013. The landlords therefore have 15 days from this date to deal with the security and pet deposit in accordance with s. 38 of the Act.

Conclusion

The tenants' application is dismissed without leave to reapply.

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for \$754.70 comprised of rent, utilities and the filing fee. The order must be served on the tenants and is enforceable through the Provincial Court as an order of that Court.

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: August 13, 2013

Residential Tenancy Branch

