



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR CNR OLC MNR MNSD MNDC FF

Introduction

This hearing dealt with applications by the landlord and the tenants. Both applications originally sought to deal with a notice to end tenancy, and the tenants had sought an order that the landlord comply with the Act; however, at the time of the hearing the tenants had vacated the rental unit, and it was no longer necessary to deal with those parts of the applications. The remainder of their applications regarded monetary claims and allocation of the security deposit. The landlord and both tenants participated in the teleconference hearing.

The hearing originally convened on December 17, 2013. On that date, due to issues with service of evidence, I determined it was appropriate to adjourn the hearing. The hearing reconvened on February 5, 2014, and on that date each party confirmed that they had received the other party's evidence. Neither party raised any further issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began in August 2010 as a fixed-term tenancy ending July 31, 2011 and reverting to a month-to-month tenancy after that time. The rental unit was the upper portion of a house. The landlord occupied the lower portion. The monthly rent was

\$1500 and utilities were not included in the rent. The tenants were to pay two-thirds of the utilities, which were estimated to be \$150 per month at that time. At the outset of the tenancy the tenants paid the landlord a security deposit of \$750 and a pet deposit of \$450. On August 4, 2010 the landlord and the female tenant carried out a move-in inspection and completed a condition inspection report that indicated the rental unit was in a clean, undamaged condition.

On May 24, 2012, the landlord served the tenants with a notice of rent increase that indicated that as of September 1, 2012 the tenants' rent would increase to \$1560 per month, and their monthly utilities would increase to \$160 per month. The landlord also served the tenants with a letter indicating that the rent increase was within the permissible amount of 4.3 percent and the utilities increase was due to an overall increase in water, garbage, sewer and hydro.

On August 24, 2013 the landlord served the tenants with a second notice of rent increase, which indicated that as of December 1, 2013 the rent would increase to \$1619 and the monthly utilities would increase to \$80 per month. The landlord again served the tenants with a letter indicating that the rent increase was within the permissible amount of 3.8 percent, and the utilities had again gone up slightly.

On September 1, 2013 and October 1, 2013 the tenants paid \$1800 for their rent and utilities. On November 1, 2013 the tenants gave the landlord a cheque for \$1320. The landlord returned the cheque to the tenants, and on November 2, 2013 the landlord served the tenants with a notice to end tenancy for unpaid rent. The tenants applied to dispute the notice on November 5, 2013. The landlord filed his application, including an application to keep the pet and security deposits, on November 19, 2103.

The tenants vacated the rental unit on November 30, 2013. They did not do a move-out inspection with the landlord.

Tenants' Claim

The tenants claimed \$2760 in compensation, for loss of safe access to the back yard and deck for three months and loss of quiet enjoyment for three months. The tenants stated that the landlord frequently played loud rap music in his suite, and the police attended three times for loud music. They also indicated that they were bothered by the cigarette smoke that entered their unit from the landlord's unit and the landlord intentionally shut off the water on November 19, 2013, and he disconnected their dishwasher so they did not have use of it for half a month.

The tenants stated that beginning in September 2013 one of the landlord's dogs started attacking the tenants' dogs and the tenants. They stated that the landlord's dog was put on a long lead that allowed the dog to come all the way up the stairs to the tenants' deck, and they therefore could not use their deck. The female tenant stated that the dog wrapped the lead around the tenant's legs and dragged her down the stairs. The tenant provided photographs of her bruised leg and foot. The male tenant operated a home business and stated that he could not have clients in his home office. The female tenant stated that she suffers from stress and anxiety, and she submitted a doctor's letter that indicated the tenant was unable to work from September 10, 2013 to January 5, 2014 due to medical reasons.

The landlord's response to the tenants' claim was as follows. The landlord stated that the tenants began calling the police or bylaw officers as retaliation after he served them with the eviction notice. The landlord stated that the officers did not have a problem with the landlord's music levels or with the dog that the tenants claimed was vicious. The landlord stated that he did shut off the hot water once for 20 minutes to replace a leaking valve, and he knocked on the tenants' door prior to commencing the work but no one answered. The landlord stated that he did not give the male tenant permission to operate an at-home business. The landlord also stated that the dog the tenants complained about was only able to come up the first three steps toward the deck, and he did not believe that the dog dragged the female tenant down the steps. The landlord submitted that the doctor's note for the female tenant is very unspecific.

Landlord's Application

The landlord claimed monetary compensation as follows:

- 1) \$1720 unpaid rent and utilities for November 2013
- 2) \$1800 unpaid rent and utilities for December 2013
- 3) \$1800 lost revenue for January 2014
- 4) \$500 carpet and suite cleaning

In support of his application, the landlord submitted photographs of the interior and exterior of the rental unit. The photographs appear to depict some minor cleaning and repairs required, aside from a large amount of driftwood and rocks that the tenants left behind. The landlord stated that he did not advertise the unit to re-rent because he was not sure if the tenants were going to move out before December 2013, there were difficulties with renting around the holiday season and the landlord had to make upgrades because of the tenants' nuisance complaints.

The tenants' response to the landlord's claim was as follows. The tenants overpaid their rent by \$80 on two occasions, in September and October 2013. The reason the tenants made further deductions to their rent for November 2013 was because they believed that the landlord had given them an illegal rent increase in September 2012, as utilities were included in rent and therefore the increase was in excess of the permissible amount. The tenants submitted that since the landlord was evicting them, he should not be entitled to rent for after that time.

The tenants stated that they cleaned the house before they moved out, but they ran out of time and it "fell apart at the end," so they were unable to do all of the cleaning. The tenants stated that several items in the rental unit were damaged at the outset of the tenancy, and the landlord did not do a lot of work on things.

Analysis

Tenants' Claim

I accept the tenants' claim that they lost some quiet enjoyment of their tenancy because the landlord played loud music. I also accept the tenants' claim that their tenancy, and in particular free use of the deck and the back yard, was diminished by the presence of the third dog. The landlord acknowledged playing music, and acknowledged some of the negative behaviours of the dog who, the landlord stated, was able to at least access the three bottom steps to the deck. The landlord did not dispute that he smoked in his rental unit or that the smoke could have entered the tenants' unit. I therefore find that the tenants are entitled to some compensation for this loss.

However, the tenants are not entitled to compensation for loss of the male tenant's at-home business. The landlord and the tenants had a residential tenancy, not a commercial tenancy, and the landlord did not accept any responsibility for the tenant's business. Additionally, I find that the female tenant did not provide sufficient medical evidence to establish that her inability to work was directly caused by the actions of the landlord. I therefore find that the tenants are entitled to total compensation of \$546, calculated as 10 percent of rent at \$1560 per month, for three and a half months.

Landlord's Claim

I find that the landlord is entitled to unpaid rent and utilities of \$1720 for November 2013, less the \$160 overpayment that the landlord received in September and October 2013. The landlord is not entitled to lost revenue for December 2013 or January 2014, as he did not mitigate his potential loss by attempting to re-rent the unit as soon as

possible. The landlord did not provide receipts or any details regarding cleaning and repairs to the rental unit; however, the tenants acknowledged that they did not complete cleaning before they vacated. The female tenant signed the move-in condition inspection report acknowledging no problems with the rental unit at the beginning of the tenancy, and if there was damage during the tenancy the tenants ought to have reported it to the landlord and made a written request for repairs. I therefore grant the landlord \$100 for cleaning and repairs.

Filing Fees

As neither the landlord nor the tenants were fully successful in their application, I decline to award either party recovery of their respective filing fees.

Conclusion

The tenants are entitled to \$546. The landlord is entitled to \$1560, less the tenants' award of \$546, for a balance of \$1014. I order the landlord to retain this amount from the pet and security deposits and return the balance of \$186 to the tenants. I grant the tenants an order under section 67 for the amount of \$186. This order may be filed in the Small Claims Court and enforced 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: February 28, 2014

Residential Tenancy Branch

