



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wing Lee Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation and to recover the filing fee?

Background and Evidence

This tenancy ended on January 30, 2012 and the security deposit was returned to the tenant.

The landlord supplied documentary evidence which included Decisions from two previous dispute resolution proceedings between these two parties.

On November 16, 2011, file # 246034, a hearing was held on the tenant's application for dispute resolution seeking a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to make repairs to the rental unit, and for an order requiring the landlord to comply with the Act.

The tenant had sought compensation for an alleged loss of her quiet enjoyment and due to the landlord's unauthorized entry to her rental unit and failure to address repair requests. The allegations surrounding the tenant's claim that she was not provided with her quiet enjoyment were noises made by other tenants in the multi-unit building, with the landlord's alleged failure to address the issues.

In a Decision dated November 18, 2011, another Arbitrator found that the tenant failed to prove that the tenant's quiet enjoyment had been unreasonably breached, or that the landlord had improperly entered the tenant's rental unit, or that there was a need for an order requiring the landlord to comply with the Act. As a result of her findings, the other Arbitrator dismissed the tenant's application for monetary compensation for a loss of her quiet enjoyment and for an order for the landlord to comply with the Act.

On January 19, 2012, file # 246360, another hearing was conducted on the tenant's application for dispute resolution in dispute of a 1 Month Notice to End Tenancy for Cause (the "Notice"), for monetary compensation, for an order requiring the landlord to comply with the Act, and for an order requiring the landlord to make repairs to the rental unit.

In a Decision of the same date, another Arbitrator recorded a settled agreement between the two parties, which stated that the tenant had secured another rental unit and that parties agreed that the tenancy would conclude, by mutual agreement, by January 31, 2012.

In that Decision of January 19, 2012, the other Arbitrator dismissed with leave to reapply for dispute resolution concerning other issues unrelated to the Notice.

On January 7, 2014, the tenant filed the present application.

The tenant's monetary claim listed in her application is \$3380, comprised of rent for 4 months at \$675 per month, moving costs of \$600, and the filing fee of \$50.

I explained to the tenant that I would be unable to consider issues which had already been decided upon by previous dispute resolution hearings, which included her claim for monetary compensation for loss of quiet enjoyment. In other words, there was a Decision on November 18, 2011, ruling on the tenant's request for monetary compensation for a loss of her quiet enjoyment and the tenant was informed that any issues dealt with in that Decision would remain unchanged.

I note that the tenant submitted that she disagreed with this Decision and had intended to file an "appeal."

In light of these parameters, and in support of her application, the tenant submitted that for the last two months of her tenancy, the unreasonable noise from other tenants in other rental units continued unabated. The tenant submitted that she phoned the landlord and left multiple messages, but did not receive a response.

The tenant submitted that she was entitled to moving costs due to the problems she endured during her tenancy.

The tenant's witness, who was the tenant's fiancée at the time, testified that he was astounded at the noise levels from other rental units, mainly from the tenants living in the rental unit above this rental unit. The witness submitted that the worst noise occurred on November 6 and 7, 2011, which was heard on the telephone when he and the tenant were speaking.

The tenant's relevant documentary evidence included a written statement from the tenant's witness, written statements from other present and former tenants of the residential property, and a redacted police report from an apparent investigation by the tenant of excessive noise on January 1, 2012.

In response to the tenant's application, the landlord submitted that she investigated and addressed each complaint by the tenant, including attending the allegedly offending rental unit spontaneously just to ensure that the upper tenants were not being unreasonably noisy.

The landlord contended that the tenant was not entitled to moving costs as the parties reached a mutual agreement to end the tenancy.

The landlord's additional relevant documentary evidence included written statements from other tenants in the residential property concerning noise allegations and character letters from independent contractors.

Analysis

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant 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.

As to the tenant's request to recover the amount she paid in rent for the last 4 months, as I informed the tenant at the hearing, I am unable to consider her request for any compensation for the time period up to November 16, 2011, the day of the dispute resolution hearing on the tenant's application for such monetary compensation as this issue has previously been decided upon by another Arbitrator on November 18, 2011, under the legal principle of *res judicata*.

As to the last two months of the tenancy, for which the tenant would be allowed to seek compensation, I find the tenant submitted insufficient evidence to support her claim that she was deprived of her quiet enjoyment. I find the written statements do no support that the tenant notified the landlord of any issues and that the landlord subsequently failed to address the issues.

I also find the tenant's witness failed to support the tenant's application, as the times he mentioned, November 6 and 7, 2011, occurred prior to the date of the hearing on November 16, 2011, which precludes me from considering this testimony.

As to the police report, although there was perhaps an incident on New Year's Eve or Day, I do not find that the noise continued unabated or that the landlord was responsible for that noise, as I had no proof that the landlord was informed of the noise and failed to address the concerns.

I therefore dismiss the tenant's request for monetary compensation for 4 months' rent for a loss of her quiet enjoyment due to the noise issue.

As to the tenant's request to recover moving costs, I find the tenant has presented no basis upon which she would be entitled to this cost. The parties mutually agreed to end the tenancy by January 31, 2012, and I therefore find I have no authority under the Act to compensate the tenant for her decision to end the tenancy. I dismiss her claim for \$600.

As I have dismissed the tenant's application, I decline to award her recovery of the filing fee.

Conclusion

For the reasons stated above, 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 28, 2014

Residential Tenancy Branch

