



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing dealt with an application by the tenants for monetary compensation. The tenants had also applied for recovery of the security deposit, but as that issue was determined in a previous hearing and was therefore *res judicata*, I did not deal with that portion of the tenants' application. One tenant, an advocate for the tenant, the landlord and counsel for the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. The tenant stated that he had only received the landlord's evidence on the date of the hearing, but he did not oppose admission of the evidence and stated he was prepared to proceed. The 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?

Background and Evidence

The tenancy began on February 1, 2013, with monthly rent of \$800. The rental unit was an apartment in a strata building. The landlord did not provide a Form K for the tenants to sign at the time of signing the tenancy agreement. The tenants vacated the rental unit on August 3, 2013.

Tenants' Claim

The tenants claimed \$4000, representing a return of all of their rent over the five months of the tenancy, for loss of quiet enjoyment; and \$5200 for lost wages.

The tenants stated that the landlord harassed the tenants and caused them severe stress and anxiety through the duration of the tenancy. The strata issued fines to the landlord for complaints about noise from the tenants, and after that the landlord tried to force the tenants to sign the Form K. The landlord told the tenants that they should take their kids outside to play all day. The tenants stated that the landlord sold the tenants a microwave oven for \$20, and then he told them to return it to him or it's theft. The police attended at the rental unit on July 11, 2013 because of noise complaints from the occupants living below the tenants. The tenants stated that there was no evidence for the noise complaints, and the tenants' kids could not even move around the house and felt very restricted.

The male tenant stated that because of the landlord's harassment in June 2013 the tenant suffered the sudden onset of depression, anxiety and severe stress, and this condition prevented him from looking for work. In support of this portion of their application, the tenants submitted a note from the tenant's doctor, copies of prescriptions for antidepressants and a letter from an employer who stated that they had hired the male tenant but he was unable to come to work due to his personal issues and they had to find someone else to fill the position.

Landlord's Response

The landlord stated that the fines from the strata were for the tenants' kids making noise late at night and for the tenants throwing items over their balcony. The landlord stated that the strata asked the landlord to have the tenants sign the Form K, but the landlord denied harassing or intimidating the tenants. The landlord stated that he only went to the rental unit once a month, to collect the rent, and he would call ahead; therefore, the tenants suffered no loss of quiet enjoyment.

The landlord submitted that there is no evidence that the male tenant's medical condition was caused by the landlord, and it was not the landlord's fault that the tenant did not get a job.

Analysis

Upon consideration of the evidence, I accept the evidence of the tenants that they did suffer some loss of quiet enjoyment when the landlord tried to get the tenants to sign the Form K. It is the responsibility of the landlord to ensure that tenants are presented with a Form K and a copy of the strata's bylaws at the time of entering into the tenancy, and if the landlord is negligent in their duty they cannot later require the tenants to sign a Form K. In this situation the landlord held a position of authority over the tenants, and I find it is reasonable for the tenants to have suffered some stress and resulting loss of quiet enjoyment. I also accept the tenants' evidence as likely that the landlord, as a result of having received the strata fines, put unreasonable pressure on the tenants to prevent their children from making noise that would result in further fines. Therefore, I find that the tenants are entitled to some compensation for loss of quiet enjoyment.

I do not find, however, that the tenants are entitled to \$4000, or return of all of their rent for the duration of the tenancy, for the loss of quiet enjoyment. The landlord received the strata's first warning letter on May 27, 2013, and the strata directed the landlord to provide the strata with the completed Form K on July 12, 2013; I therefore find it unlikely that the landlord began to raise the issue of noise with the tenants before the end of May 2013. Further, rent covers many services and amenities in a tenancy, not only quiet enjoyment, and I therefore find it reasonable to award the tenants \$320 for loss of quiet enjoyment, calculated at 20 percent of the rent for the months of June and July 2013.

I find that the tenants did not provide sufficient evidence that the actions of the landlord directly resulted in the tenant's inability to find work, and I therefore dismiss the portion of the tenants' application regarding compensation for lost wages.

Conclusion

For the reasons set out above, the tenants are entitled to \$320 for loss of quiet enjoyment. I grant the tenants an order under section 67 for the balance due of \$320. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The remainder of the tenants' application is dismissed.

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: March 4, 2014

Residential Tenancy Branch

