



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants for monetary compensation for loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement.

The Tenants appeared for the hearing along with the Landlord named on the Application; however an agent for the company who is the Landlord named on the tenancy agreement also appeared and explained that the Landlord named on the Tenant’s Application was the building manager and that he is the owner of the company. As a result, pursuant to Section 64(3) (c) of the Act, the parties consented to the Tenant’s Application being amended to also include the company name as a Landlord in this case as well as the correct mailing address of the Landlord.

The Landlord’s agent confirmed receipt of the Tenant’s Application by registered mail. The parties provided affirmed testimony during the hearing and the Tenants submitted a two page hand written document which contained their written submissions. No further written evidence was provided by the parties.

Issues to be Decided

The Tenants claim four months of rent in the amount of \$2,880.00 from the Landlords for loss incurred as a result of noise disturbance and assault by another resident in the building. Therefore, have the Tenants met the burden of proof in this case and should they be awarded monetary compensation?

Background and Evidence

The parties agreed that this tenancy for a rental suite in an apartment building started on September 1, 2013 for a fixed term of one year after which time it will continue on a

month to month tenancy. A written tenancy agreement was completed, although not provided in written evidence, and rent is payable by the Tenants to the Landlord in the amount of \$720.00 on the first day of each month. The Tenants paid a security deposit on August 24, 2013 in the amount of \$360.00.

The male Tenant testified that in January, 2014 the neighbour upstairs (the "Resident") started to cause noise disturbances during the night and early hours of the morning. This included banging and shaking noises which often woke the Tenants and their young children.

The male Tenant testified that he spoke to the building manager several times about this problem and in turn the building manager spoke to the Resident about curtailing her noise. The male Tenant testified that the building manager told him that he had now done his part and that from now on the Tenants should call police if he they had any further issues.

The male Tenant testified that in March, 2014, the Resident started to play loud music in the early hours of the morning and as a result, they called police who attended her unit but no one was at there to answer the door. The Tenants provided a police file reference number relating to this incident.

The male Tenant testified that the building manager was informed of this but did nothing about it; instead the building manager told the Resident that she should talk to the Tenants to resolve the issue. The male Tenant testified that the Resident attended their rental suite and spat in his face and assaulted him in front of his children. The Tenants called the police and the Tenants provided another police reference number in their written submissions.

When the Tenants were asked whether they had addressed this issue with the Landlord, they explained that they had told the building manager several times about the Resident's behaviour but had not formally written to the Landlord about this.

The Landlord's agent explained that they had not received any written complaint letter from the Tenants at any point during the tenancy about the problems being caused by the Resident. However, the building manager acknowledged that the Tenants had made complaints to him verbally about the noise coming from the Resident's suite. The Landlord's agent explained that if the complaints from residents are of a minor nature, resolution is attempted to be sought informally between the parties. However, there is an expectation that if the matter is serious in nature then residents will put this in writing so that it can be escalated to management for more formal action such as utilizing the

remedies under the Act to end a tenancy. The Landlord's agent submitted that the noise complaints were minor in nature and were being blown out of proportion by the Tenants.

The Landlord's agent testified that when the Tenants explained to the building manager that police had been called, the building manager tried to get a police report about the nature and details of the incident in order to take formal action against the Tenant, but the police refused to provide this information to them as they were not a party to the incident. As a result, the building manager requested this from the Tenants who failed to also provide him with any further information.

The female Tenant explained that the police would not give them a report and told them that the police reference number would suffice. The male Tenant explained that this was provided to the building manager on a document which was put under his door. The building manager explained that he was seeking to get the parties together to resolve the issue informally; however he agreed with the Renter that if she were to speak with the Tenants about the noise issues then this should be done in a professional manner.

The Tenants explained that they have endured these disturbances for four months. The parties then explained that the Tenant had left the rental suite in April, 2014 and no further disturbances have taken place since this time; the Landlord's agent confirmed that the Tenant had been evicted from the rental unit for unpaid rent.

Analysis

When a party makes a claim for damage or loss under the Act, the burden of proof is on the Applicant to prove the existence of the loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the Respondent.

Section 7(2) of the Act states that a party making a claim for compensation must do whatever is reasonable to minimize the loss. Therefore, the Applicant must provide sufficient evidence that they took reasonable action to address the situation and to mitigate the losses that were incurred. Furthermore, when the only evidence a party relies upon consists of oral testimony provided during a hearing and this is disputed by the opposing party with an equally probable version of the events, this results in one party's word against the others; without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails. This does not necessarily mean that one party's word is believed over the other's, but simply that in the interest of natural and fair justice, a party's **disputed and unsubstantiated testimony alone** may not be sufficient to support a decision in favour of the Applicant.

The Tenants' claim from the Landlords is for loss and peaceful enjoyment of their rental suite as a result of the building manager's lack of action in addressing the noise issues with the Resident; the Tenants also blame the building manager for an assault by the Resident. However, I find that the Tenants have failed to provide sufficient evidence showing the nature and the extent of the noise being created by the Renter and how this caused them loss of peaceful and quiet enjoyment of the unit equivalent to four months of rent. The Landlord's agent submitted that the Tenants' lack of written complaints suggests that the noise disturbance was minor in nature and I accept that the building manager tried to informally resolve this issue by warning the Resident.

In addition, I also accept the building manager's testimony that he was seeking to get the parties together to resolve the issue, but unfortunately this inadvertently led to an alleged altercation between the Resident and Tenant. The Tenants failed to provide sufficient evidence of this altercation with the Resident and I find that the building manager cannot be held responsible for this alleged altercation. The Tenants rely on police file reference numbers as evidence that this altercation and disturbances took place; however, I find that the police file reference numbers are not sufficient evidence of disturbance or assault.

I also find it hard to believe that the Tenants endured 'excessive' noise levels from the Resident for four months without seeking to address the issue with the Landlord in writing or exploring the remedies through dispute resolution to get the Landlord to take some action from the onset of the disturbance in January, 2014. As a result, I find that the Tenants failed to mitigate loss and I find that the Tenants' Application must fail.

Conclusion

For the above reasons, I dismiss the Tenants' Application. 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: July 29, 2014

Residential Tenancy Branch

