



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a tenant's application for orders for compliance and a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Since the tenancy has since ended I found it unnecessary to further consider the tenant's request for orders for compliance. The remainder of this decision deals with the tenant's monetary claims against the landlord.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement in the amount claimed?

Background and Evidence

The tenancy commenced August 15, 2011 and the tenant was required to pay rent of \$1,100.00 per month. The tenancy ended April 30, 2014.

The rental unit is located in a four-plex and all of the units are tenanted. The tenants have shared access to the fenced yard space. The tenant occupied her unit along with another adult, her child, and a large-breed dog.

The tenant is seeking compensation of \$5,000.00 from the landlord for breach of quiet enjoyment. The tenant asserted that the landlord has a history of taking insufficient action to deal with other tenants that disturb the tenant. The tenant described the following events as disturbing to her:

- In April 2012 the landlord permitted young men to occupy the unit above the rental unit. The young men partied a lot causing noise disturbances and resulted in police attendance at the property. One of the young men also kept a neglected dog tied up in the yard. The tenant brought the disturbances to the landlord's attention several times. The tenant was unreasonably disturbed until July 2012 when the worst offender of the young men moved out.
- The tenant was disturbed when the bailiffs entered the upper unit to evict the tenants in the upper unit.
- In March 2014 the landlord rented a unit to a woman with five children. The children left the fence gates open, jeopardizing her dog's safety, and the tenant's repeated requests to keep the gates closed when unheeded. The tenant phoned the landlord several times about her concerns. The landlord had additional fencing installed in an attempt to create designated yard space; however, the children continued to accessed by designated areas.
- The neighbour's children engaged in a game/fight involving throwing the tenant's dog feces. The dog feces hit the wall of the building and the tenant's personal possessions that were in the yard. The tenant informed the landlord but the tenant eventually ended up cleaning the feces off her possessions herself.
- The neighbour then vandalized the tenant's possessions located in the yard and the tenant is of the position the landlord should have known that the neighbour would likely damage to property given her children had previously thrown dog feces toward her possessions.
- Despite the tenant's concerns about the neighbour and her many children disturbing the tenant, the landlord rented another unit in the building to the neighbour's friend and her children a few weeks later bringing more disruption to the tenant.
- The other tenants left their laundry in the common laundry room on multiple occasions.

The tenant's basis for seeking \$5,000.00 is comprised of the following components.

- \$1,400 for damage to tenant's personal property vandalized by neighbouring tenant: including the tenant's lawn decorations, planters and \$800.00 barbeque.
- \$1,680.00 for lost wages due to the tenant's inability to go to work after being unreasonably disturbed by other tenants.
- The balance of \$1,800.00 is for loss of quiet enjoyment and moving costs.

The tenant did not provide receipts or other evidence to corroborate the value of her possessions. The tenant did not provide copies of her pay statements, or other evidence, to demonstrate loss wages attributable to events that may have taken place at the property. Nor did the tenant provide documentary evidence to show how much moving costs she incurred.

The landlord acknowledged that the tenant contacted him several times during the tenancy to inform him of problems she was having with other tenants living at the property. In response, he would often go speak with her and take her a bottle of vodka "to settle her down". The landlord expressed that he is at a loss as to why the tenant is seeking monetary compensation against him. With respect to the tenant's specific concerns identified above, the landlord provided the following responses:

1. The landlord spoke with the young men and after doing so the tenant would confirm that the situation had improved. Then it would deteriorate again. This cycle repeated a number of times and then the landlord requested that the young man causing most of the disturbance move out, which he did.
2. Using a bailiff is the legal way to regain possession of a rental unit where evicted tenants have not vacated.
3. The landlord did not expect that renting the lower suite to a family would have been so problematic for the tenant. After hearing about the dog feces incident the landlord spoke with the neighbouring tenant and she agreed to clean up the dog feces; however, the tenant went ahead and did it herself before the other tenant did so.
4. The landlord installed additional fencing in an effort to alleviate the tenant's concerns; however, the yard space has to be accessed by all tenants to come and go from the parking area to their respective units.
5. The landlord did not foresee vandalism to the tenant's property by the other tenant, as alleged, and the tenant disposed of her barbeque before he got a chance to inspect the damage.
6. The landlord pointed to letters written by the other tenants showing the tenant herself was offensive toward the other tenants.
7. The tenant told the landlord she was moving out which he accepted and he did not charge her for much of the damage he asserted the tenant caused to her unit.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The tenant did not supply any verification of the value of her damaged property, lost wages, or moving costs and I do not consider her requests for compensation for such things further. I proceed to consider whether the tenant is entitled to compensation of \$1,800.00 for loss of quiet enjoyment.

Under the Act, every tenant is entitled to quiet enjoyment. Quiet enjoyment includes use of their unit with freedom from unreasonable disturbance and freedom to use the residential property without significant interference.

Where a tenant lives in a multiple-family building, the tenant should expect to hear noises and experience other inconveniences associated to normal living activity from time to time. Such occasional disturbances or inconveniences are not breaches of the covenant of quiet enjoyment and are not compensable under the Act. Only where the disturbances become “unreasonable” or the interference is “significant” may a breach be found.

As provided in Residential Tenancy Policy Guideline 6: *Right to Quiet Enjoyment* a landlord may be held responsible for a breach of quiet enjoyment where a landlord sits idly by while others unreasonably disturb the tenant or significantly interfere with the tenant’s ability to use and enjoy the property. In other words, a landlord has a duty to protect the tenant’s right to quiet enjoyment by taking action where the landlord is aware of other tenants causing the tenant to suffer a loss of quiet enjoyment.

In this case, it is undisputed that the tenant notified the landlord of circumstances when she felt she was being unreasonably disturbed or her ability to use the residential property was significantly interfered with. Therefore, I find the issue to determine is

whether the events that she put forth constitute “unreasonable” disturbance or “significant” interference and whether the landlord took sufficient action in response to those complaints.

Where a landlord has a tenant that is unreasonably disturbing other tenants it is important for tenants to appreciate that immediate eviction of an offending tenant is not a reasonable expectation. Where a landlord has a tenant who is unreasonably disturbing others, depending on the offence, escalating enforcement is often typical and appropriate. For example: noise complaints or other offensive behaviour are often dealt with by investigating the complaint, issuance of warnings to the offending tenant, and if circumstances repeat or worsen then an eviction notice may be issued. Issuance of an eviction notice also takes at least one month to enforce and it is not unusual for a number of months to pass before the landlord is in a position to have the offending tenant removed from their unit.

Having heard that the tenant experienced disturbances by young men occupying the upper suite between April 2012 through July 2012 I find this is not an unreasonable period of time to resolve noise complaints, for reasons given above. Further, use of a bailiff is the landlord's legal remedy to physically remove tenants that have been evicted and it is not within the landlord's control to dictate how the bailiff approaches the unit and carries out the task authorized by the court. Therefore, I make no award to the tenant for disturbances during this time period.

Upon hearing from both parties and reading the statements of the tenants that moved into the building in March or April 2014 I have no doubt there was conflict between the tenant and the new tenants. However, I find the landlord did not sit idly by in response to the tenant's complaints considering: he spoke with the new tenant about having her clean up the dog feces spread by her children and he installed more fencing in an attempt to give the tenants segregated yard space. I find the landlord's remedies were limited given the yard had to remain accessible by all so as to permit other tenants, other occupants, and their guests the ability to come and go from their units.

With respect to the alleged vandalism of the tenant's property by the other tenant, I find the tenant's remedy was to pursue a criminal complaint against the offending tenant. I am not convinced that the landlord ought to have expected the other tenant would vandalize the tenant's property because her children had previously thrown dog feces.

Disputes between tenants are difficult to resolve especially where parties are not willing to take responsibility for their own contribution to the dispute. In this case, the tenant

did not appear to take responsibility for leaving dog feces in the yard or yelling at the other tenant's children and I find these actions likely contributed to the conflict.

In light of all of the above, I find the tenant has not satisfied me that the landlord sat idly and allowed other tenants to breach her quiet enjoyment. Therefore, I dismiss her claims against the landlord.

Conclusion

The tenant's application has been dismissed in its entirety.

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: June 18, 2014

Residential Tenancy Branch

