



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MNR, MNSD, MNDC, FF

For the tenant – MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; for a Monetary Order to recover double the security deposit; and to recover the filing fee from the landlord for the cost of this application.

The tenant and one of the landlords (DF) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision..

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords permitted to keep the security deposit?

- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order to recover double the security deposit?

Background and Evidence

The parties agree that this month to month tenancy started on November 01, 2013. Rent for this upper unit was \$1,400.00 per month due on the first of each month. The tenant paid a security deposit of \$700.00 at the start of the tenancy. The tenant provided a forwarding address in writing on March 17, 2014.

The landlord testified that the tenant complained about the tenants residing in the lower unit on November 26, 2013. the landlord testified that she took advice from the Residential Tenancy Office and served the lower tenants with a Two Month Notice to End Tenancy at the beginning of December, 2013. The tenant continued to complain and asked the landlord for a discount of one month's rent due to the behaviour suffered by the tenant and her sons from the lower tenants. The landlord testified that they agreed that the tenant could have a rent discount of \$700.00 spread over the months of December and January.

The landlord testified that as part of the agreement to discount the rent the tenant had to agree to continue to reside in the rental unit for at least the next six month. The tenant did agree to this; however, the tenant gave notice to end her tenancy at the end of January, 2014 and vacated the rental unit at the end of February, 2014. As the tenant did not reside in the rental unit for the next six months as agreed the landlords seek to recover the discounted rent of \$700.00 and request an Order to keep the tenant's security deposit of \$700.00 to cover this.

The landlord testified that the tenant took a mirror from the rental unit at the end of the tenancy. The landlord had applied for \$80.00 to replace this mirror; however, the tenant has since found the mirror and it has been returned to the landlords. The landlords therefore withdraw this section of their claim.

The landlord testified that as the tenant did not provide a forwarding address in writing until March 17, 2014 the landlords had to serve the tenant with their hearing package to the dispute address as the tenant had informed the landlords that her mail was being redirected to her new home. The landlord testified that the registered mail was returned to the landlords as Canada Post will not redirect registered mail. The landlord testified that they then had to resend the hearing package to the tenant's new address. The landlord seeks therefore to recover the cost of registered mail and compensation for the inconvenience to the landlords of having to send it twice. The landlords also seek compensation of \$50.00 because the tenant paid her rent for February late. The landlord testified that the tenant had informed the landlords that her rent could not be paid until February 07, 2014 and the landlord responded by informing the tenant that this would be fine but the tenant would need to pay an extra \$50.00 for late rent. The landlords have applied for \$200.00 in compensation.

The tenant disputes the landlords' claim. The tenant testified that when she viewed the unit with the landlords she told the landlords that she is a single parent with two sons and needed a quiet place to live and that as a family they did not want to be around a party house. The landlord had informed the tenant that the lower tenants had never been a problem. The tenant testified that from the day they moved into the rental unit the lower tenants created a terrible situation and the tenant's living conditions became intolerable. The tenant testified that they noticed the smell of cigarette smoke and marijuana from the lower unit and the noise from music blasted through the tenant's floor. The tenant testified that she started to complain to the landlords and DF came to speak to the lower tenants. This resulted in the landlords serving the lower tenants with an eviction notice.

The tenant testified that she has to work some night shifts and her two sons have to stay home alone. The tenant testified that the noise from the lower unit was so bad it disturbed her sons' sleep. The tenant called the landlord again and the landlord went to speak to the lower tenants. The tenant testified that the lower tenants became angry at the tenant and blamed the tenant for getting them evicted. The lower tenants persisted in smoking, playing loud music and using profanities. On one occasion the tenant spoke to the lower tenants who were sitting outside their unit, the tenant asked them to have some common courtesy

and not play their music too loud. One of the lower tenants got off his chair to come at the tenant and started to swear at her.

The tenant testified that the lower tenants would have what sounded like violent arguments and they used the "F" word frequently. The tenant testified that her youngest son suffers badly with anxiety and this situation made his condition much worse. On another occasion the tenant was at work and her sons were home. Her oldest son was trying to study but the noise was so bad the tenant's sons had to call their father to come to the unit. The father came and knocked on the door of the lower tenants; the lower tenants would not answer so the boy's father came upstairs and stamped on the floor. The boy's father then went back downstairs and more profanities were directed at him. The lower tenant followed the boy's father upstairs screaming and swearing at him in front of the tenant's sons. It became so bad that the tenant's youngest son was terrified and the boy's father called the police. The boys had to go and stay at their fathers. The tenant testified that at this point she asked the landlord for compensation for the period the lower tenants were going to remain in the unit. The tenant testified that she liked the rental unit and area and did not want to have to leave so agreed to stay for at least six months after the lower tenants moved out.

The tenant testified that the behaviour from the lower tenants continued and on New Year's Eve morning it became so bad the tenant called the police. The police went to speak to the lower tenants and the lower tenant swore at the police officer and was arrested. The police called the tenant to inform her of this and that the lower tenant would be released in the morning. When the lower tenant came home the next day; the tenant and her sons could clearly hear him stating that "he was going to get her for calling the police and that he would not hurt the little one because he is too small but he was going to smash the tenant's other sons face in. Even if he was not still living here he would be waiting for him round the corner and is going to get him and he doesn't care if he goes to prison". The tenant testified that they all became very scared of these threats and not knowing what that person was capable of. The tenant testified that she called the landlord DF straight away and was told there was nothing she could do but not to worry because that lower tenant is all talk. The tenant testified that this was not good enough so the tenant called the police to report these threats. The tenant testified that the officer she spoke to advised the tenant to find a new

place to live so the lower tenant would not know their address this way the tenant and her sons would not have to fear this person coming back especially on the nights the tenant had to work. The tenant testified that the police officer also told the tenant that the lower tenant was known to the police and was a drug addict who lived for his addiction.

The tenant testified that due to this she gave the landlord one months notice and found a new place to live. The tenant testified that she did have to ask the landlord to extend her move out date in the event her new place was not ready. The tenant disputes therefore the landlords' claim to recover the compensation paid in the form of a rent discount of \$700.00 and disputes the landlords' claim to keep the security deposit.

The tenant disputes the landlords' claim for registered mail fees. The tenant testified that she asked the landlord if they wanted her forwarding address but was informed that the landlords were withholding the security deposit due to the discounted rent.

The tenant testified that as the landlords did not return the tenant's security deposit within 15 days the tenant seeks to recover double the security deposit of \$1,400.00.

The tenant seeks to claim a further amount of \$500.00 from the landlords for her loss of quiet enjoyment of the rental unit as the landlords failed to protect the tenant's rights and the tenancy was devalued due to the actions of the lower tenants. The tenant testified that she also had to take time off work to file her application and to deal with doctor appointments for her youngest son's anxiety.

The landlord disputes the tenant's claims. The landlord testified that she understands that the tenant felt threatened living in the unit but if the tenant was so afraid why the tenant asked the landlords if she could stay until the end of March. The tenant responds that she had to do this as her new landlord had asked the tenant to give her tenants a couple of more weeks to move out. As it happened this was not required. If the tenant had to have stayed longer the tenant's sons would have stayed at their dad's house and the tenant could have ensured that all her doors were locked in case the lower tenants ever came back.

The landlord testified that she sought advice from the Residential Tenancy Office and was advised to give the lower tenants a Two Month Notice for renovation as another Notice is harder to prove. The landlord testified that as a landlord it is not their responsibility to protect the tenant and her family, the tenant could have moved somewhere else if she was so worried about the threats from the lower tenants but instead the tenant chose to stay in the unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regards to the landlords' claim for \$700.00 rent; I have considered both parties arguments and find the tenant did agree to stay in the rental unit for a further six months if the landlords agreed to discount her rent by \$700.00 spread over December and January. The tenant did not continue to reside in the unit and as such I find the landlords are entitled to recover the discounted rent. I therefore find in favour of the landlords' claim to keep the security deposit in lieu of the discounted rent pursuant to s. 38(4)(b) of the *Act*.

With regard to the landlords' claim for compensation of \$200.00 for registered mail fees, a late fee of \$50.00 and for inconvenience; there is no provision under the *Act* for compensation to be awarded for registered mail fees, I refer the parties to s. 7(1)(d) and s.7(2) of the Residential Tenancy Regulations which state:

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

As the landlords did not include a clause in the tenancy agreement which informed the tenant that a fee would be charged for late rent the landlord are not entitled to apply this fee. Furthermore, I am not satisfied that the landlords were inconvenienced sufficiently in having to send two registered mails to the tenant that would warrant any amount of compensation being paid by the tenant. Consequently, I dismiss the landlords' application for compensation of \$200.00.

With regard to the tenant's claim to recover double the security deposit. I refer the parties to s. 38(1) of the *Act* which says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlords did receive the tenant's forwarding address in writing on March 17, 2014. As the landlords had already filed an application to keep the security deposit on March 07, 2014 the landlords did apply within the 15 allowable days. Furthermore, as I have awarded the security deposit to the landlords pursuant to s. 38(4)(b) of the *Act* I must dismiss the tenant's application to recover it.

With regard to the tenant's claim for compensation of \$500.00 for a loss of quiet enjoyment and time off work; I refer the parties to s.28 of the *Act* which states:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance

with section 29 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however a written provision setting out the terms in the tenancy agreement pertaining to the provision of quiet enjoyment cannot be used to remove any of the rights of a tenant established under the Legislation. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

Having considered the evidence before me I find the tenant's right to quiet enjoyment was not protected by the landlords. The landlords were informed of the lower tenants' actions against this tenant and her sons and did not take the necessary action to evict the lower tenants in a timely manner. This allowed the lower tenants to continue to frighten and intimidate the tenant and her sons which disturbed their quiet enjoyment of their rental unit. The landlords' recourse should have been to issue the lower tenants with a One Month Notice to End Tenancy for Cause to prevent their actions against this tenant escalating to the point that police were called on more than one occasion and threats made against the tenant and her family. Consequently, I uphold the tenant's claim for compensation of \$500.00.

As both parties have been partially successful with their respective claims I find both parties must bear the cost of filing their own applications.

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. The landlords are entitled to the sum of \$700.00 and may keep the security deposit to cover this monetary award.

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$500.00** pursuant to s.67 of the *Act*. The Order must be served on the landlords. Should the landlords fail to comply with the Order, the Order may be enforced through the Provincial Court 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: June 19, 2014

Residential Tenancy Branch

