



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the Landlord’s compliance – Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

At the onset of the hearing the Tenant abandoned her claim over \$25,000.00. As the tenancy has ended the claim for the Landlord’s compliance no longer has any application and I dismiss this claim.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on July 1, 1972 and ended April 30, 2012. Rent of \$767.00 was payable monthly.

The Tenant states that a Decision dated January 21, 2010 gives the Tenant leave to reapply for compensation if the Tenant continued to suffer a loss of quiet enjoyment. The Tenant states that after this date and to July 2011, the Landlord acted to intimidate the Tenant and cause her stress by prowling around her unit at night, by parking in an unoccupied space next to the Tenant, by overwatering her plants, dumping snow, and by leaving a loud radio playing in the next unit. The Tenant states that the Landlord also carried out two inspections without stating the purpose on the notice of entry. The Tenant states that she was not present for these inspections. The Tenant states that when the Landlord sent a letter in December 2010 indicating future arbitration and including a copy of a letter from the Landlord's lawyer she was devastated and fearful. The Tenant indicates that nothing occurred after a July 2011 inspection by the Landlord but that she was unable to keep the past experience from bothering her.

The Tenant submits that she suffered ill health, including heart problems, as a result of the Landlord's actions, and believing that the Landlord would continue with his intrusive behavior, the Tenant was forced to move. The Tenant states that due to her advanced age and circumstances and because this had been her home for so long it took her quite some time to make the decision to end the tenancy and that it took some time to find the right unit at a level of rent that was affordable. The Tenant states that she also had to downsize from a three bedroom unit to a one bedroom unit and that disposing of her extra belongings took considerable time. The Tenant claims compensation, including aggravated damages of \$25,000.00.

The Landlord states that the two entries into the unit were for the purpose of an inspection and were allowed by the last Decision. The Landlord argues that since the Act distinctly allows monthly inspections, the Landlord does not have to provide any other reason for the entry into the unit for those two inspections. The Landlord indicated that he carried out the inspections to look at the general condition of the plumbing and electrical and was concerned about the condition of the unit given the Tenant's behavior and condition.

The Landlord states that he only had the radio on while working in the neighbouring unit and that nobody ever complained or asked that the sound be reduced. The Landlord states that the Tenant did complain about loud radio noise to other repair persons. The Landlord denies doing anything else to bother the Tenant.

The Landlord argues that any incidents that occurred until the last two years are barred by the limitation act that restricts the Tenant to claims from April 2012 forward. The Landlord argues that there has been no conduct since that date that could be considered a breach of either the tenancy agreement or the Act.

Analysis

Section 60 of the Act provides that an application for dispute resolution must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned. Residential Tenancy Branch Policy provides that the Limitation Act does not apply to claims made in an application under the Act. As the Tenant made her application within two years of the end of the tenancy, I find that the Tenant's claims that arose during the tenancy as contained in the application may be considered.

Despite the Limitation Act not applying to the Tenant's claims, where there has been an unreasonable delay in bringing a claim, a party is barred from making such a claim. The principle of res judicata also stops the consideration of matters that have already been the subject of determination. Further, although leave to reapply for compensation was granted in the January 2010 Decision, I note that the Tenant had not applied for compensation for damages prior to or at the time of the January 2010 Decision wherein determinations were made on the subject of the Landlord's acts to January 2010. To consider an amount of damages on matters that have already been the subject of findings and determination and where the Tenant did nothing to pursue a claim for compensation at the time and for a very long period thereafter, would be unfair. I therefore consider that at the most the Tenant was at liberty to make an application for compensation if the Landlord continued to breach the Act and for breaches that

occurred after January 2010. I therefore dismiss the Tenant's claim for damages in relation to the breaches of the Landlord to January 2010.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment, including a right to reasonable privacy and freedom from unreasonable disturbance. Aggravated damages are awarded where compensation is necessary to take into account distress and humiliation or other serious injury and not to penalize the offending party.

Although the Landlord denies that he did anything to disturb the Tenant after January 2010, I accept the Tenant's evidence that she was very disturbed by the Landlord's indication of possible future arbitration, particularly in light of the Landlord's previous claims that were found to be without merit. I also find it likely that the Landlord pushed the boundaries of acceptable behavior by parking next to the Tenant and by playing loud music. I find that this was purposeful behavior intended to provoke the Tenant and resulted in a loss of quiet enjoyment. However there is no evidence to support the Tenant's assertion of serious injury from this provocation and I therefore dismiss the claim for aggravated damages. Given the length of the tenancy and considering the Tenant's age the Tenant understandably took some time to make the decision to end the tenancy and find another rental. However considering that the Landlord did nothing between July 2011 and April 2012 when the tenancy ended, I do not find that the Landlord caused the Tenant to end the tenancy. I therefore dismiss the Tenant's claims for losses in relation to ending the tenancy and moving out of the unit or downsizing. Considering that the Tenant otherwise had full enjoyment of the unit, I find that the Tenant is entitled to only nominal compensation of **\$100.00** per month for the loss of quiet enjoyment for the period January 2010 to July 2011 inclusive for a total entitlement of **\$1,900.00**. As the Tenant's application has met with only some success I find that the Tenant is entitled to recovery of half of the filing fee in the amount of **\$50.00** for a total entitlement of **\$1,950.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$1,950.00**. If necessary, this order may be filed in the Small Claims Court and enforced 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: September 22, 2014

Residential Tenancy Branch

