



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL MNSD MND MNDC RP PSF OLC FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain a Monetary Order for damages to the property pursuant to section 67;
- b) To recover the filing fee for this application.

This hearing also dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- c) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49;
- d) To obtain an Order for a refund of rent pursuant to section 65 for loss of peaceful enjoyment and a further monetary order for compensation for the resulting stress, lost wages and moving costs.
- e) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated July 5, 2014 to be effective September 5, 2014 and the tenant confirmed it was served personally on them. The effective date on the Notice is automatically corrected to September 30, 2014 pursuant to section 53 of the Residential Tenancy Act as a two month Notice to End Tenancy for landlord's use must give a full two months' notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). The tenant /applicant gave evidence that they served their Application for Dispute Resolution by registered mail and the landlord agreed they received it. The tenants agreed they received the landlord's Application by registered mail. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenancy is ended pursuant to section 49 and they are entitled to a monetary order for damages that were

caused by the tenant and are beyond reasonable wear and tear? Have they proved the cost to repair the damages? Is the landlord entitled to recover the filing fee?

Has the tenant proved on a balance of probabilities that their peaceful enjoyment was not ensured contrary to section 28 of the Act and that this was caused by act or neglect of the landlord? If so, to how much compensation is the tenant entitled?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in June 12, 2014, it is a month to month tenancy, rent is \$850 a month and a security deposit of \$425 and pet damage deposit of \$100 were paid on May 10, 2014. The landlord served a Notice to End Tenancy for their own use of the property. In the hearing they testified that the son of the landlord and his fiancée have returned from school in Australia and needs this downstairs suite to occupy. The son and fiancée gave supportive evidence.

The tenants said they first were sceptical of the landlord's intent as the relationship had turned sour between them. However, they accept the fact that the son needs a place to live. They vacated the suite on August 4, 2014 after alleging they gave 10 days notice to the landlord together with their forwarding address. The landlord said she never received that notice. There is no copy of the Notice provided in evidence although there are many pages of other evidence including medical, letters from relatives, receipts from Ikea and statements about noise problems.

The landlord claims \$1,109.22 in damages for a plumbing repair. They said the tenant's toilet was blocked by something that looked like a shrub or weeds and it caused a flood in the basement area. Included in their evidence are a plumber's report and a photograph. The tenants deny that they caused the flood. They said that the toilet started bubbling and then backing up together with the bathtub backing up; they enclosed a video that showed the flood and water rapidly filling the bathtub about $\frac{3}{4}$ full. They said the plumber worked mainly in an adjoining suite. The landlords said they never used the toilet in the adjoining suite.

The tenants claim \$3,476 for the following:

- i. \$200: for gas for their car as they had to make numerous trips to pack as they feared the landlord and only could work in daylight.
- ii. \$1350: as a refund of all their rent for June and July 2014 as their peaceful enjoyment was constantly interfered with contrary to section 28 of the Act. The interference came from persons or children overhead constantly running

- and walking and also from the landlord's relatives' threatening behaviour. They also said the internet did not work properly and the landlord refused to give them a key to the mailbox. The landlord said that any noise was just from the normal living of a family of five with two children; they dispute that the noise was excessive. The landlord said they supplied their Wi-Fi password for free and they are not responsible for the strength of the signal, although they had no complaints from past tenants about it. The landlord also said that they offered to supply a separate mailbox with key or to deliver the mail at 1 p.m. when the mailman arrived. The tenants did not dispute that this offer was made.
- iii. \$3,000: for the emotional impact and stress caused by the landlord's threatening behaviour, constant noise so they could not sleep and harassment. They explained that they have a challenging work schedule and could not get the necessary sleep. The landlord explained that it is one incident that the tenants are citing. One of the relatives whom they describe as a "muscly man" was worried about his mother, the landlord, as she was experiencing health problems due to the constant complaints of the tenants. Apparently they were delivering letters every few days since move-in with various demands. He confronted the male tenant who was bringing in groceries and asked him to "Stop harassing my Mother". The tenant said this was accompanied by a clenched fist and a warning that they were getting one chance. They state it frightened them so they lived in fear afterwards and felt they could not sleep in the suite. They contacted the RCMP concerning the threat. The landlord said the threat was exaggerated by the tenants, it was maybe their perception and the Police have never contacted them.
 - iv. \$152.50 for loss of wages. In the hearing, the male tenant said he missed time at work but it was mostly due to the preparation of the Residential Tenancy Application and evidence.
 - v. The tenants originally claimed for moving costs but now waive them as they said they moved themselves.

Included with the evidence is the Notice to End Tenancy, some medical information from both parties, a plumber's report and invoice, recordings by the tenant, letters from relatives and many statements of the parties.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on each party to prove their claim on a balance of probabilities. The landlord has the onus of proving the damage, that it was caused by the tenant, that it was beyond reasonable wear and tear and the cost to cure the damage. I find the landlord has not satisfied the onus. The weight of the evidence is a plumber's report made at the time of the flood. The report states he put a camera through the drains, and "the whole house is clogged. Attempt drain clear through basement". This does not support the landlord's allegation that the tenants caused this clog. I find the tenant's evidence more credible on this point as they made a video at the time of the flood and it clearly shows the bathtub backing up and water flooding the floor. This video is not consistent with weeds or a shrub in the tenant's toilet causing the back up (as the landlord claimed). I find the landlord not entitled to recover his costs of diagnosing the cause and fixing his drains as there is insufficient evidence to prove this was caused by the tenant. I dismiss the landlord's claim.

On the tenant's claim, the onus is on them to prove on a balance of probabilities that their peaceful enjoyment was unreasonably disturbed due to act or neglect of the landlord, that this forced them to move so the landlord should bear the associated costs; also that they did not get services promised and were subject to undue stress. They must also establish the amount of compensation to which they are entitled.

They claim compensation mainly for loss of their reasonable enjoyment. Many of their problems were caused by excessive noise and an alleged threat made by one of the landlord's relatives. I find insufficient evidence to prove that this alleged threat was of such a nature to cause them the heightened fear and anxiety they describe. They did call the RCMP but apparently, the police did nothing about it which does not support the tenants' claims of the seriousness of the alleged threat. The landlord testified that the police did not contact them at all.

They also describe constant running and noise from upstairs. However, I listened and watched their videos which were made in their suite on various days and at various times and could detect no loud noise, although I could hear other small background noises. When this was mentioned in the hearing, the tenant said I would have to wear headphones to hear it properly because of the nature of their equipment. I do not accept this explanation as I saw and heard another video on the same equipment made in their mother's home and I could hear extremely loud background noise. I also heard clearly the confrontation between the male tenant and the landlord where he claims she was yelling at him; I heard a very loud argument between the parties who were both very upset and both raising their voices. I heard no abusive language.

Although some letters regarding noise were provided, I find they were unsworn and from relatives so I give little weight to this evidence. Therefore I find the weight of the evidence does not support the tenants' claim that their peaceful enjoyment was significantly impacted by the landlord's act or neglect. I dismiss their claim for refunds of June and July rent and for compensation for the negative emotional impact as I find insufficient evidence that this was caused by an act or neglect of the landlord.

Regarding their claim for the cost of gas for moving, I find it was their choice to make many trips; there is insufficient evidence that the landlord's behaviour caused them to do this. Therefore, I dismiss this portion of their claim. Regarding their claim for poor service of internet, I find the landlord provided the Wi-Fi password as verbally agreed and is not responsible for the quality of this free service. On their claim for lack of a key to the mailbox, I find that the landlord provided offers to them that would allow them to have independent mail box delivery; I find the landlord is not obliged to give them a key to the landlord's personal mailbox. I dismiss this portion of the tenants' claims.

In respect to their claim for lost wages of \$152.50, the male tenant stated in the hearing that this was mainly due to filing papers with the Tenancy Branch and preparing them. The Act provides for compensation of \$50 only for Applications and it is in the discretion of the Arbitrator to award this or not, usually based on the merits and success of the claim. There is no further compensation for preparing for the hearing.

Although this was not an issue discussed in the hearing, I note that if the tenants receive a Notice to End Tenancy for landlord's use of the property, pursuant to section 50, the tenant can give 10 days written notice and receive a refund of the balance of that month's rent as well as a free month's rent. However the tenants paid no rent for August so no refund is due for the balance of August under this section. They are entitled to one month free rent pursuant to sections 49 and 51; I find their free month is August 2014 so no refund of rent is due and the landlord is owed no rent for August 2014.

In respect to their security deposit, I find they have not satisfied the onus of proving they served the landlord with their forwarding address in writing; the landlord denies receiving it. Although they provided a great deal of written evidence, this is not in their evidence package. Their application for the return of the security deposits is therefore premature. They should serve the landlord with their forwarding address in writing immediately (perhaps by registered mail due to the difficult relationship between the parties). Registered mail is deemed to be received 5 days from mailing and the landlord then has 15 days to either return the deposits in full or make an Application to claim against them or the tenant may claim double the deposits pursuant to section 38.

Conclusion:

I dismiss the Application of the landlord in its entirety without leave to reapply.

I dismiss the Application of the tenant in its entirety without leave to reapply. No Order of Possession is requested by the landlord as the tenants have vacated.

No filing fee is awarded to either party due to their lack of success in proving their claims.

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 10, 2014

Residential Tenancy Branch

