



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNDC, FF

For the landlord – MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied 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 landlord for the cost of this application. The landlord applied for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The original hearing was adjourned to allow the tenants time to respond to the landlord's evidence as this was only received two days before the original hearing. As I determined that the landlord's evidence was relevant and that the adjournment of this hearing would not prejudice the tenants the hearing was adjourned until September 08, 2014 under the Rules of Procedure 6.3. The parties attended the reconvened 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 reconvened 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 tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on February 01, 2014 for a fixed term tenancy of one year. Rent for this unit was \$970.00 per month plus 40 percent of utilities. Rent was due on the 1st of each month in advance. The tenants testified that they vacated on April 07, 2014 and the tenants provided a forwarding address in writing on April 21, 2014. The landlord testified that he is unsure which day the tenants vacated the unit.

The tenants' application

The tenants' claim that the landlord did not protect the tenants' right to quiet enjoyment of the rental unit. MM testified that when they viewed the unit the landlord had assured the tenants that the tenant living in the unit above was moving out. That upper tenant had a Pit Bull dog and a young child and did not move out until the end of March, 2014. During the period of February and March the upper tenant significantly disturbed the tenants' peace and quiet enjoyment. The upper tenant's dog would bark continually and it was often unleashed and approached MM. The upper tenant's child would stomp and run around in the unit causing disturbances until often after 9.00 p.m. The upper tenant's child would use outdoor toys inside the unit which also caused disturbances. This noise would go on for seven days a week or whenever the tenant and his child were at home. MM agreed that from March, 2014 MM was working full time and did not get home until often at 8.00 p.m. but then could not get to sleep due to the noise from

the upper tenant's unit. The other tenant BZ was home at the time as he was not working and his quiet enjoyment was disturbed throughout the day and night.

BZ testified that the upper tenant would laugh at them and appeared to take pride in telling the tenants that he had got the other female tenant, previously living in their unit, to move out. BZ testified that the upper tenant would take a baseball bat and bang on his balcony railings to further disturb the tenants. BZ testified that they had spoken to the landlord about these issues and were told by the landlord that the landlord had a hearing coming up to evict the upper tenant; however, at that hearing the landlord was not successful and the upper tenant did not vacate until the end of March.

MM testified that whenever they tried to speak to the landlord about the issues they were having the landlord just got angry and said he would talk to the upper tenant; however, nothing was ever resolved. MM testified that the landlord knew he had a problem with the upper tenant and should never have rented the unit to the tenants without disclosing these issues first.

MM testified that the landlord also contributed to the tenants' loss of quiet enjoyment as the landlord was always at the property, walking back and forth and looking in the tenants' windows. The landlord would also knock on the tenants' door and want to gain access without notice. MM testified that she felt that their privacy had been compromised and as such the tenants put up a camera. MM testified that as the landlord did not protect the tenants right to quiet enjoyment of their rental unit the tenants seek compensation equivalent to the rent paid for February and March, 2014 of \$1,940.00.

MM testified that as they were forced to move out of the unit in April, 2014 due to the issues mentioned above the tenants seek to recover moving costs from the landlord of \$500.00. MM testified that they hired a man with a van to help them move their belongings and also used their own truck to move their belongings into storage. The

person helping the tenants move was paid \$275.00 and the tenants seek an amount of \$225.00 for their time and gas costs.

BZ testified that he was away visiting his parents when some of the disturbances took place. BZ testified that he kept getting calls from MM saying she was scared of the tenant upstairs who had also taken some of their belongings from the common laundry room. BZ testified that as they had asked the landlord to deal with these issues so many times and the landlord had failed to do so, BZ felt he needed to fly back from his parents to assist MM in dealing with the upper tenant. The tenants seek to recover the cost of BZ's airfare to an amount of \$622.91.

The tenants seek to recover the costs incurred to store their belongings during March and April, 2014. MM testified that they used storage from March 15, 2014 as they felt they needed to put their valuable belongings into storage after the landlord attempted to evict the tenants for non payment of rent and because of the upper tenant's actions. MM testified that the storage costs for March and April were \$330.00.

The tenant requested to amend their application to include a Monetary Order for 30 hours of their time spent doing paper work for this hearing and for a day and a half for traveling back and forth to file applications, for time spent in moving their belongings to storage and to read and process all the documents. The tenants seek to recover \$3,500.00.

The landlord disputed the tenants' claims. The landlord testified that when the tenants came to look at the unit they were desperate and needed a place to live. The landlord testified that he gave the tenants plenty of time to look around and to talk to the tenant upstairs. The tenants were aware that the building was pet friendly as the advertisement indicated this and the landlord had informed the tenants that the upper tenant had a dog. The landlord testified that in the time the upper tenant has lived in the unit the landlord has never heard the dog barking. The dog is very old and is not dangerous. The landlord testified that the tenants started to complain about the upper tenant's dog

and his child. The child was about two or three years old and although the landlord agreed that the child was not quiet all the time, the child was also not noisy all the time as the tenants have testified.

The landlord testified that he did give the upper tenant a warning letter concerning the upper tenant's dog on March 05, 2014 and a copy of this has been provided in documentary evidence. The landlord testified that during February the tenants were all friends; however, something happened between them and these tenants fell out with all the tenants residing in the building. The tenants also stopped communicating with the landlord except by text messages. The landlord testified that he did have some issues with the upper tenant over rent and did disclose to the tenants that he was evicted the upper tenant in the middle of March. A hearing did take place and the landlord was successful; however, as that upper tenant applied for a Review Consideration of the decision against him this delayed the eviction process by another week until the end of March.

The landlord disputed that the upper tenant laughed at these tenants or that the upper tenant harassed these tenants. The landlord disputed that these tenants were significantly disturbed for the term of their tenancy. The landlord testified that it was the upper tenant who had to call the police to these tenants as they were slamming doors and windows which disturbed the upper tenant. The only noise these tenants would have experienced would have been if the upper tenant's child happened to jump on the floor. The landlord testified that he never received a written complaint from the tenants but rather numerous text messages were received.

The landlord agreed that he was on the property a lot as he does the maintenance for the property. The landlord disputed that he walked back and forth or that he peered into the tenants' windows. The landlord testified that he only spoke to the tenants to try to establish communication in order to keep the tenancy alive. The landlord testified that the tenants never gave the landlord the chance to go into their unit to hear any

disturbances from the upper unit. The landlord therefore disputed the tenants' claim for compensation of \$1,940.00.

The landlord disputed the tenants' claims for moving costs. The landlord testified that he did see the tenants moving out over a few days but they only moved a few blocks away. The landlord disputed the tenants' claim to recover airfares. The landlord testified that MM informed the landlord that BZ was driving up north but now they are saying BZ was flying. The landlord testified that he is not responsible for BZ's airfare. The landlord testified that MM never once texted the landlord about not feeling safe the text messages were all about money. The landlord disputed the tenants' claim to recover costs for storage.

The tenants ask the landlord about his testimony where the landlord earlier said he did not know which day the tenants moved out; however, now he is saying he saw them move out. The landlord responded and testified that the tenants were moving out over a few days and the landlord saw this when he was working at the property. The landlord testified that he does not know the exact date they were finally out of the unit. MM asks the landlord about the time the landlord came to pick up the rent and wanted to walk through the unit. The tenant asks the landlord why he did not provided a Notice of Entry. The landlord responded that they day he came to collect rent he asked the tenant what was a good day to schedule an inspection and not that he wanted to gain entry without notice. BZ asked the landlord if he did try to evict the upper tenant over the dog but lost the case. The landlord responded that he has never lost a case and the upper tenant was evicted for unpaid rent and the issue with the dog came later.

The landlord asked the tenants how the tenants can hold the landlord libel for \$3,005.00 when the landlord offered the tenants a rental unit for a year. MM responded that the landlord did not tell them how the tenant upstairs was or that he had a dog that is considered to be a dangerous breed running free. The landlord asks the tenants about the advertisement showing the building is pet friendly. MM responded that the landlord

did not mention a pit bull and the upper tenant had hidden the dog when MM spoke to him. MM testified that the landlord was not forthright.

The landlord's application

The landlord testified that he experienced stress, harassment and disturbances from these tenants which have prevented the landlord from doing his job. The landlord testified that the tenants had texted the landlord 40 to 50 times in one day and between March 01 and March 06, 2014 the landlord received 95 text messages from the tenant. On April 08, 2014 the tenants sent 45 texts to the landlord concerning the upper tenant's cat which was left behind. The tenant had informed the landlord about the cat and the landlord called the SPCA. The SPCA advised the landlord that he was responsible for the cat; however, MM was afraid the landlord would take the cat and so the tenants took care of it in the laundry room. When the landlord came to get the cat the tenants had taken it to the SPCA office, as the office was closed they brought the cat back. Meanwhile the landlord had arranged for the SPCA to come and take the cat. The landlord testified that this caused more stress and harassment for the landlord and due to all the stress the landlord seeks damages of \$2,700.00.

The landlord testified that he had spent 18 hours preparing documents for the hearings concerning these tenants. The landlord testified that for his work he is normally paid \$65.00 per hour. Therefore, the landlord seeks to recover \$2,210.00 from the tenants.

The tenants disputed the landlord's claims. MM testified that the landlord is saying the tenants do not communicate with him but then states he has received text messages from the tenants. MM testified that the tenants did not harass anyone and the issue over the cat occurred because the upper tenant left the cat but came back looking for it. The tenants had called the SPCA but couldn't get back in time to meet with them. The tenants then found that that landlord is obligated to look after the cat and so they sent the landlord text messages about the cat not to harass the landlord. MM testified that text messages were only sent during business hours and they were always respectful.

This was the method used to communicate with the landlord. The tenants therefore dispute the landlord's claim for damages of \$2,700.00.

The tenants disputed the landlord's claim for \$2,210.00 for punitive damages. MM testified that the landlord has been continually hostile and angry towards the tenants and should not be entitled to claim damages in preparation for this hearing.

The landlord asks the tenants why BZ took the cat to the SPCA and then sent text messages threatening the landlord with fines. MM responded that they only texted the landlord about his obligations towards the cat but the landlord turned this around. They only cared for the cat because they knew the upper tenant wanted the cat back. The landlord asked the tenants if the 95 text messages sent within six days is harassment. MM responded that some of these messages were very short and all were respectful in communicating with the landlord. The landlord asked the tenants other questions that had no bearing on either party's claims.

Analysis

The parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

With regard to the tenants' application for compensation equal to two months' rent for a loss of quiet enjoyment; as explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this matter the tenants have testified that the landlord did not protect their right to quiet enjoyment and they were significantly disturbed by the upper tenant's actions and by the upper tenant's dog and his young child. The landlord has disputed this in its entirety. The tenants were not able to provide any independent evidence to

support their version of events concerning the noise from the upper tenant's unit or that the landlord was attempting to evict that tenant for reasons connected to the dog.

The tenants' case is entirely dependent on their version of events, a version which is disputed by the landlord. I have no basis for favoring one version over the other; However, the landlord has provided documentary evidence to show that he did write to the upper tenant about his dog to inform that tenant that there had been complaints about the dog and to remind that tenant that the dog must be kept on a leash when on the property. I find therefore that the tenants have not established that the landlord has breached the covenant of quiet enjoyment or stood idly by while others engage in such conduct. Accordingly, this portion of the tenant's claim is dismissed.

With regard to the tenants' claim for moving costs of \$500.00; as I have found there is no evidence to show the landlord breached the covenant of quiet enjoyment I must therefore also find the tenants chose to move out of the unit of their own free will. Consequently, the landlord is not responsible for any moving costs or storage costs. Accordingly, these portions of the tenants' claim are dismissed.

With regard to the tenants' claim to recover airfares for BZ; I have applied a test for damage or loss claims. In this instance the burden of proof is on the tenants to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the tenants did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The tenants seek to recover an airfare they claim was paid to fly BZ back when MM felt scared living in the unit.; However, the tenants have failed to provide sufficient evidence to show that an airfare was actually paid and that BZ did not drive to see his parents as stated by the landlord; the tenants have not shown that the tenant MM informed the

landlord at any time that she felt scared or intimidated by the upper tenant that would warrant BZ cutting his trip short and flying home. Accordingly, this portion of the tenants' claim is dismissed.

With regard to the tenants' claim to recover damages for time spent in preparation for this hearing; there is no provision under the *Act* for damages to be awarded to an applicant to prepare for or to attend a hearing other than the \$50.00 filing fee. Accordingly, this portion of the tenants' claim is dismissed.

With regard to the landlord's claim for damages of \$2,700.00 for stress, harassment and disturbances by the tenants which prevented the landlord doing his job; in connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy. A landlord does not have a reciprocal right to quiet enjoyment under the *Act*. The landlord is responsible to deal with issues raised between tenants and any time spent dealing with this is considered to be in the course of the landlord's business. The landlord's recourse is to issue a tenant or tenants with a One Month Notice to End Tenancy for cause because the tenants have significantly disturbed another occupant or the landlord. Accordingly, this portion of the landlord's claim is dismissed.

With regard to the landlord's claim for \$2,210.00 for the time spent in preparation for and attending hearings; as stated to the parties during the hearing there is no provision under the *Act* for damages to be awarded to an applicant to prepare for or to attend a hearing other than the \$50.00 filing fee. Accordingly, this portion of the landlord's claim is dismissed.

As both parties have been unsuccessful, both parties must bear the cost of filing their own applications.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

The landlord's application is dismissed in its entirety without leave to reapply.

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 09, 2014

Residential Tenancy Branch

