



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 by way of a conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), for the Landlord to comply with the Act, and to recover the filing fee from the Landlord.

Both parties appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant’s Application and written evidence which were served by registered mail. The Landlord confirmed that she did not submit written evidence prior to the hearing. The hearing process was explained to the parties and they were asked if they had any questions.

Preliminary Issues

The Tenant had disclosed in the details section of her Application a request for the return of her security deposit paid at the start of the tenancy. The Tenant explained that she had not provided the Landlord with a forwarding address in writing but that this was documented on her Application.

Section 38 of the Act requires a Tenant to provide the Landlord a forwarding address in writing before the Landlord’s obligation to deal with the return of the security deposit under the Act comes into effect. As a result, I find that it is not sufficient to provide a Landlord with a forwarding address on an Application and therefore I am unable to deal with the Tenant’s request for the return of the security deposit in this hearing.

However, the parties confirmed the Tenant’s address on the Application and as a result, the Landlord is hereby put on notice that she will be deemed to have received the decision five days after the date it was written and will have 15 days from that date of

receipt (by October 22, 2014) of this decision to deal with the Tenant's security deposit pursuant to Section 38 of the Act.

I refer both parties to the informational resources available to the parties in relation to the return of the security deposit as follows, but not limited to; Sections 35, 36 and 38 of the Act and Policy Guideline 17 to the Act.

Issue(s) to be Decided

- Was the Tenant justified in breaking the tenancy?
- Is the Tenant entitled to monetary compensation for damage or loss under the Act?

Background and Evidence

Both parties agreed that this tenancy for a multilevel townhouse in a strata development started on March 1, 2014. A written tenancy agreement was completed for a month to month tenancy, although the parties agreed that a discussion was had about it being renewed for a fixed length of time. Monthly rent under the agreement was payable by the Tenant in the amount of \$1,200.00 on the first day of each month. The Tenant paid \$600.00 as a security deposit at the start of the tenancy which the Landlord still retains.

The Tenant testified that on the first day they moved into the rental suite they were approached by one of their neighbouring residents who informed them that the neighbour residing next to the Tenant had mental health issues and created on going disturbance to the surrounding residents in the vicinity.

The Tenant was concerned and contacted the Landlord by e-mail asking her whether she knew of any of these issues with their neighbour. The Landlord responded to the e-mail writing that the neighbour in question has a problem with smokers but other than that he is harmless. The Landlord referred the Tenant in her e-mail to the strata president for further reference and asked that she be contacted if there was any noise. The e-mail correspondence was provided as evidence.

The Tenant testified that on the first night they heard the neighbour in question banging, screaming and yelling in his unit. The Tenant could not make out what he was saying or who it was being directed at but it appeared that he was arguing and the Tenant was very concerned about this behaviour.

The Tenant testified that this behaviour continued and there was no fixed pattern; it would occur at random times of the day and on random days of the week. The Tenant testified that she feared for the safety of her children and was often disturbed and concerned by this behaviour.

The Tenant testified that she contacted the Landlord several times about this and she was referred to the strata manager for assistance who told her that the neighbour was an ongoing problem for them and that she needed to take the matter up with police. The Tenant explained that the property manager had a number of police file numbers and a log of the disturbances created by the neighbour, some of which was provided in written evidence. This log details the aggressive behaviour of the neighbour. The Tenant also provided e-mail evidence from another resident which indicates the previous history of disturbances by the problem neighbour.

The Tenant testified that she had also called the police several times because of the disturbances but they were unable to take action as the disturbances would stop when the police arrived. The Tenant provided the name of the police officer dealing with these incidents.

The Tenant explained that over the course of the next two and half months she endured this yelling, screaming and banging by the neighbour. On May 13, 2014 the Tenant explained that her husband discovered the neighbour standing in front of their patio doors moving his head back and forth and looking to the upper balcony where their bedroom was located.

The Tenant explained that this was the final straw and she e-mailed the Landlord the next day informing her that due to the circumstances and their fear for their safety, they would be vacating the rental suite at the end of May, 2014, which they did. The Tenant explained that her husband had to take time off work to be with her and their child for the remainder of the month because of this incident and had the Landlord made them aware of the neighbour and his issues, they would not have moved in.

The Tenant now seeks moving costs in the amount of \$425.00, utility hookup fees for this tenancy and their new tenancy in the amount of \$100.00, and \$2,000.00 for loss of peaceful and quiet enjoyment of the rental suite. The Tenant also claimed \$41.19 for a blocked sink repair that was completed by them during the tenancy.

The Landlord questioned the Tenant on the May 13, 2014 incident submitting that the Tenant's bedroom is on the second floor so how could the neighbour be staring into her bedroom. The Tenant confirmed her written evidence and stated that he was standing

on the ground level in front of the patio doors and staring at the second level bedroom windows while rocking back and forth.

The Landlord explained that the neighbour who was a renter of another owner in the strata complex did indeed have mental health issues but these did not pose a danger to any of the residents. The Landlord submitted that the neighbour was not noisy after 11 p.m. and that the Tenant should be expected to put up with a reasonable level of noise in a complex development.

The Landlord acknowledged that she knew of the Tenant's mental health condition before the Tenants took up occupancy but did not feel the need to inform the Tenant about this as the neighbour was not a safety concern. The Landlord testified that she had spoken with the strata president who informed her that no other complaints about the neighbour had been received.

The Landlord submitted that she had referred the Tenant to the property manager as she was a distant Landlord. The Landlord also confirmed that she had received the Tenant's notice to end the tenancy on May 15, 2014 for the end of May, 2014 by e-mail. However, the Landlord submitted that this was not proper written notice to end the tenancy.

In relation to the sink repairs completed by the Tenant, the Landlord submitted that this was an unauthorised repair which, had she known it was required, she would have completed the repair at her own cost.

The Landlord made a number of other submissions which related to an allegation of damages to the rental suite by the Tenant. However, the Landlord was informed that these submissions would be more appropriate for her Application.

Analysis

Section 28 of the Act provides that a Tenant is entitled to quiet enjoyment, reasonable privacy and freedom from unreasonable disturbance. Policy Guideline 6 to the Act explains in detail the covenant of quiet enjoyment.

Section 45(3) of the Act states that if a Landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the Tenant gives written notice of the failure, the Tenant may end the tenancy effective on a date that is after the date the Landlord receives the Notice.

Based on the oral and written evidence provided by the Tenant, I find that there is sufficient evidence to show that the Tenant's right to peaceful and quiet enjoyment of the tenancy for the three months it was occupied had been breached by the neighbour.

Furthermore, I find that the Landlord had been put on notice both verbally and in writing of these issues and I find that the Landlord failed to deal appropriately with the problem, instead referring the Tenant to the strata property manager for resolution who were unable to provide her with one. I find that it is not appropriate for a Landlord to absolve themselves of their obligations to the Tenant under the Act because they are a distant Landlord.

While I acknowledge that the Landlord is not responsible for the actions and behavior of other residents in a complex development, I find that under the circumstances there were sufficient grounds for the Tenant to end the tenancy at the end of May, 2014 and the Tenant had made the Landlord aware of this through an e-mail which had been received and acknowledged by the Landlord. Therefore, I find that the Tenant was justified in breaking the tenancy under Section 45(3) of the Act.

I find that the lack of action or attempt by the Landlord to provide potential resolution to the Tenant through a more targeted response with the strata to deal with the neighbour's behavior gives rise to monetary compensation to the Tenant for loss and peaceful quiet enjoyment of the rental suite, especially when there had been a previous similar history of problems before the tenancy started.

I do not accept the Landlord's submission that the neighbour does not pose a threat to other residents as the evidence provided by the Tenant, which includes evidence from other independent sources such as other residents and the strata manger, suggests otherwise and that the behavior was aggressive and intimidating, often requiring the need to call police. I find that the Tenant endured a long period of disturbances by the neighbour until the level of disturbance had escalated to the more serious incident of May 14, 2014 where the Tenant was no longer able to reside in the rental suite.

The Tenant claims \$2,000.00 for loss of peaceful and quiet enjoyment of the rental suite including loss of work time and wages by her husband who had to be with her during the end of the tenancy. In considering the amount of compensation to be awarded to the Tenant, the aggravating factors that I take into account is the minimal action taken by the Landlord to resolve this issue for the Tenant and the proven loss of enjoyment by the Tenant of the rental suite; in mitigating factors, I take into account the fact that it was not the Landlord herself that engaged in the disturbing and intimidating behavior.

Based on the foregoing, I find it more appropriate to award the Tenant one month's rent as compensation in the amount of \$1,200.00. I also award the Tenant the filing fee of \$50.00 pursuant to Section 72(1) of the Act. Therefore the total amount awarded to the Tenant is \$1,250.00.

In relation to the Tenant's claim for the utility hookup fees and moving expenses, I am not willing to award these amounts as these are costs the Tenant would be responsible for when she would have eventually vacated the tenancy. Furthermore, the Tenant failed to provide supporting documentation to verify these losses.

In relation to the costs of repairs claimed by the Tenant, I find that these were unauthorized repairs which the Tenant had no written authority from the Landlord to complete of their own volition and therefore this cost must be borne by the Tenant.

Conclusion

For the reasons set out above, I grant the Tenant a Monetary Order in the amount of **\$1,250.00** pursuant to Section 67 of the Act. This order must be served on the Landlord and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

The remainder of the Tenant's Application is dismissed.

The Landlord has until October 26, 2014 to deal with the Tenant's security deposit and is at liberty to make an Application for the alleged damages to the rental unit.

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: October 02, 2014

Residential Tenancy Branch

