



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify.

Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was sufficiently served in accordance with the Order for substituted service. I find the Application for Dispute Resolution filed by the Tenant was personally served on the landlord on November 7, 2014. With respect to each of the applicant's claims I find as follows:

All of the evidence was carefully considered including the following:

- a. The oral testimony of the parties and their witnesses
- b. The documents and photographs presented by the parties.
- c. The digital evidence including the digital photographs presented by the parties.

Preliminary Issue:

Section 72 of the Residential Tenancy Act provides as follows:

How the hearing may be conducted

- 74** (1) Subject to the rules of procedure established under section 9
(3) *[director's powers and duties]*, the director may conduct a hearing under this Division in the manner he or she considers appropriate.

Both parties filed an Application for Dispute Resolution. As the landlords had filed their claim first in time I ordered that they should be the first party to proceed with the presentation of their case. The Residential Tenancy Branch schedules 1 ½ hours for a hearing. The landlords were not able to complete the presentation of all of their evidence. When it became apparent we would not complete without an adjournment I determined it was appropriate to give the tenants an opportunity to respond to the landlords' evidence while it was still fresh. After the tenant had responded and the expiry of the allotted time I ordered the matter adjourned to the next available date. Upon the reconvening of the hearing I ordered that the landlords continue with the presentation of their evidence. After the completion of the landlords case the tenants was given an opportunity to respond and then continued with the presentation of evidence relevant to their case. The landlords were given an opportunity to respond to the tenant's claim. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Since the completion of the hearing I have become aware that the landlords submitted an audio recording of a portion of the first hearing. The private recording of a dispute resolution hearing is prohibited and contrary to the Rules of Procedure. The landlord did not make a request to record nor advise the arbitrator she was doing this. Rule 9 of the Dispute Resolution Rules of Procedure provided as follows:

Rule 9 – Recording of a Dispute Resolution Proceeding

9.1 Private recording

Private audio, photographic, video or digital recording of the dispute resolution proceeding is not permitted. (My emphasis)

9.2 Official recording

A party requesting an official recording by a court reporter must provide written notice stating the reasons for the request, to the other party and to the Residential Tenancy Branch at least 2 business days in advance of the dispute resolution proceeding. An arbitrator will determine whether to grant the request and will provide written reasons, if requested.

If permission is granted for an official recording of the dispute resolution proceeding by a court reporter, the party making the request must:

- a) make all necessary arrangements for attendance by a court reporter and court reporter's necessary equipment;
- b) pay the cost of the court reporter's attendance; and
- c) must provide all parties with copies of the recording, transcript, or both, as ordered by the arbitrator.

This is a serious breach of the Rules of Procedure. I considered recusing myself and ordering that the parties to start afresh. However, in the circumstances I determined that it was appropriate to ignore the audio recording and render a decision for the following reasons:

- The hearing has been lengthy and has been ongoing for an extended period of time.
- As the landlord submitted the compact disc with the recording I infer that she was unaware that she had breached the Rules.

I hope the landlords did continue with the unauthorized recording of the procedure as such evidence is not permissible and is to be destroyed.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlords are entitled to a monetary order and if so how much?
- b. Whether the landlords are entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlords are entitled to recover the cost of the filing fee?
- d. Whether the Tenants are entitled to a monetary order and if so how much?
- e. Whether the Tenants are entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a fixed term written tenancy agreement that provided that the tenancy would start on September 1, 2013 and end on August 31, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$2200 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$1100 at the start of the tenancy.

On June 12, 2014 the landlords obtained an order for Possession and a monetary order in the sum of \$2200 for non-payment of the rent for June. The tenants applied for review. On June 25, 2014 the application for review was dismissed. The tenants vacated the rental unit on June 30, 2014.

Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlords' claims I find as follows:

- a. I determined the landlords have established a claim in the sum of \$375 for non-payment of the rent for May 2014.
- b. I determined the landlords have established a claim in the sum of \$2200 for loss of rent for the month of July. I determined the tenants breached the fix term tenancy by failing to pay the rent on a timely basis. The

tenants are responsible to pay the rent for the period of the fixed term tenancy subject to the landlord's obligation to mitigate their loss. I determined the landlord has sufficiently attempted to mitigate their loss by attempting to re-rent the rental unit. The tenants failed to satisfactorily clean the rental unit. The landlords were not able to re-rent the rental unit for July because of the tenants' failure to leave the rental unit in accordance with the 10 day notice and the poor condition the rental unit was left.

- c. The landlords were able to rent the rental unit for August for \$2000 per month. The tenant subsequently left because of the smell of cat urine and cigarette smoke. I determined the landlords have established a claim in the sum of \$200 for the difference what the new tenant paid and what the tenants were obliged to pay under the fixed term tenancy.
- d. I determined the landlords have established a claim against the tenants in the sum of \$75.60 for the cost of carpet cleaning. The tenants failed to sufficiently clean the carpets. However, the tenants are not obliged to pay the \$10 tip given by the landlord.
- e. The landlords claimed the sum of \$400 for the cost of cleaning the curtains including labour to remove curtains, transport and from cleaners and re-hang curtains and deodorizing). The tenants were smokers. I determined it was appropriate to have the curtains cleaned. However, the landlords failed to prove the amount of the claim. In the circumstances I determined the landlords are entitled to \$250 of the claim.
- f. I determined the landlords are entitled to \$400 for the cost of cleaning the rental unit. I do not accept the evidence of the tenant that she properly cleaned the rental unit.
- g. I determined the landlords are entitled to \$375 for the cost to remove cigarette ashes from the air vents.
- h. I determined the landlords are entitled to \$75 for the cost of window cleaning.

- i. The landlords claimed the sum of \$808.61 for 2/5 of the cost of floor sanding and refinishing. Landlords' Witness #1 acknowledged the floors were worn when the tenants moved in but not all the way down. I determined the landlords are entitled to \$400 of this claim.
- j. I determined the landlords are entitled to \$85 for the cost of oven cleaning.
- k. I determined the landlords are entitled to \$150 for the cost of outdoor clean-up.
- l. I determined the landlords are entitled to \$62.50 for the cost of carport cleanup.
- m. I determined the landlords are entitled to \$50 for the cost of damage to the curtains caused by the tenants' cats.
- n. I determined the landlords are entitled to \$35 for the cost to repair a patio door latch.
- o. I determined the landlords are entitled to \$35 for the cost to repair damaged drywall.

In summary I determined the landlords have established a monetary claim against the tenant(s) in the sum of \$4768.10 plus the \$75 filing fee for a total of \$4843.10. The filing fee includes the additional \$25 which the landlords had to pay for the application for an order for substituted service. I dismissed the landlords' claim of \$50 for the filing fee in the previous application for a Direct Request Order for Possession and monetary order. I determined that I have jurisdiction to award the filing fee in this proceeding but not a previous proceeding. .

Security Deposit

I determined the security deposit plus interest totals the sum of \$1100. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$3743.10.

Tenant's Application:

The tenants claimed the sum of \$8374.80. With respect to each of the tenants' claims I find as follows:

- a. The tenants claimed the sum of \$1920 (\$20 an hour for 2 people - 4 hours a day for 12 days for the cost of a ponderosa pine that had been cut. The landlords testified they came over on the day the tree was cut and for a few days later and removed most of the debris. The photographs indicate that on the day the tree was cut there was significant reduction of the enjoyment of the rental property. However, I am satisfied based on the evidence presented that most of the debris was removed within a few days. The tenants failed to keep adequate contemporaneous records of their efforts to remove the debris. The tenant failed to make a claim for compensation at the time and made a claim over a year after the tree had been cut and 4 months after the tenancy had come to an end. I determined the tenants claim is excessive and does not adequately reflect their efforts and the degree of disruption. However, I determined the tenants are entitled to \$200 in compensation for this claim.
- b. I dismissed the tenants claimed of \$160 for the cost grout cleaning and cleaning the house as the tenants failed to present sufficient evidence to prove this claim.
- c. The tenants claimed the sum of \$160 for the cost of cleaning up the carport area. The tenants testified they move six truck loads of the landlord's belongings to the landlord's residence. The landlords dispute the number of belongings moved. I determined the tenants are entitled to \$50 for this claim.
- d. The tenants claimed the sum of \$4399.80 for breach of the covenant of quiet enjoyment. The tenants calculate their claim as follows: The rent is \$2200 per month. Based on a 30 day month the daily rent is \$73.33 per day. The tenants seek compensation alleging breach of the covenant of quiet enjoyment and harassment for 60 days. The tenant relies on the following evidence:

- A number of incidents where the landlord has given notices under the Residential Tenancy Act and the particulars have engaged in unpleasant yelling and screaming.
- One incident when the landlord attempted to serve a document after 11:00 p.m.
- The video of an incident where the arguments got out of hand
- The service of a document on the tenants 14 year old daughter
- Disputes over the payment of rent and utilities.

The landlord disputes the tenants' claims on the following basis:

- The landlord and her agents have only engaged in reasonable attempts to enforce the lease and Residential Tenancy Act and collect rents and other monies owed. The landlord denies any harassment.
- The incidents alleged by the tenants do not constitute a breach of the covenant of quiet enjoyment as they do not meet the requirements of that claim.

Policy Guideline #6 includes the following:

"Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

It is necessary to **balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises**, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for

damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it. A landlord would not be held responsible for interference by an outside agency that is beyond his or her control, except that a tenant might be entitled to treat a tenancy as ended where a landlord was aware of circumstances that would make the premises uninhabitable for that tenant and withheld that information in establishing the tenancy.”

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Harassment

Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”.³ As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions, however all reflect the element of ongoing or repeated activity by the harasser.

The landlord is entitled to attend at the rental unit to collect rent and serve documents associated with a tenancy and proceedings under the Residential Tenancy Act and this does not constitute harassment or a breach of the covenant of quiet enjoyment provided it was done with civility. However, after carefully considering the disputed evidence I determined that on many occasion the landlord let her emotions get the better of her amounting to a breach of the covenant of quiet enjoyment. The tenants’ claim of reimbursement of \$4399 (60 days rent) is not supported by the evidence and without merit. However, in the circumstances I determined the tenants are entitled to compensation in the sum of \$200.

- e. I dismissed the tenants’ claim for the damage deposit in the sum of \$1100 as it has already been dealt with in the landlord’s claim.
- f. I dismissed the tenants’ claim of \$375 for the cost of unpaid work. The work was allegedly done on the landlord’s residence. The landlord testified the tenants

never did the work or they have been paid for all work they have done. I determine that such a claim does not fall within the jurisdiction of the Residential Tenancy Act and is not a tenancy issue. As a result I have no jurisdiction to consider the issue.

- g. I dismissed the tenants claim in the sum of \$100 for the cost to repair a rock wall in the driveway. The Condition Inspection Report at the start of the tenancy does not indicate the rock wall is damaged. The landlord testified it was damaged during the tenants' tenancy and there is tire marks leading up to it. The landlord submits the tenants caused the damage. The landlord did not agree to pay the tenant to do the work or ask the tenant to complete it. I determined the tenants failed to prove this claim.
- h. I dismissed the tenants' claim of \$160 for the cost to clean a pond (8 hours multiplied by \$20 per hour). The tenancy agreement provided that the tenant was responsible for regular maintenance and upkeep of the yards and grounds... including the collection and disposal of yard trimmings. The tenants failed to prove this work was anything more than regular maintenance and upkeep. Further, the landlord did not agree to pay the tenants nor ask the tenants to do the work.

Summary:

In summary I determined the tenants have established a claim against the landlords in the sum of \$450 plus \$50 for the cost of the filing fee (reduced to reflect the limited success of the tenant) for a total of \$500.

The landlords have established a claim against the tenants in the sum of \$3743.10.

The tenants have established a claim against the landlords in the sum of \$550. **After setting off one claim against that of the other I ordered that the tenants pay to the landlords the sum of \$3243.10.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: January 22, 2015

Residential Tenancy Branch

