



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKSIDE TITLE LTD. NO 732544
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's four agents (collectively "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agents confirmed that they were the property and building managers for a property management company that is employed by the landlord company named in this application. All four agents confirmed that they had authority to speak on behalf of the landlord company at this hearing. This hearing lasted approximately 67 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application and the tenant was duly served with the landlord's written evidence.

At the outset of the hearing, the tenant confirmed that her security deposit was returned to her in full by the landlord and that she wished to withdraw her application for the return of her security deposit. Accordingly, this portion of the tenant's application is withdrawn.

Issues to be Decided

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The landlord confirmed that this tenancy began on September 1, 2014 and ended on February 27, 2015. The tenant stated that she moved out on February 19, 2015 and then returned to clean her unit. Monthly rent in the amount of \$995.00 was payable on the first day of each month. The landlord stated that a security deposit of \$497.50 was returned to the tenant on March 6, 2015 but an incorrect mailing address was provided by the tenant so the deposit was resent again in July 2015. The tenant stated that she advised the landlord about her correct mailing address in April 2015. A move-in condition inspection report was completed on August 31, 2014 and a move-out condition inspection report was completed on February 27, 2015. A written tenancy agreement was provided for this hearing.

The tenant seeks monetary compensation totalling \$7,027.00 due to a loss of quiet enjoyment at the rental unit. The tenant testified that the landlord violated sections 10.1, 16.1 and 3.1 of the *Act*. These sections do not exist in the current *Act*. However, during the hearing, I confirmed that the tenant was referring to a loss of quiet enjoyment, which is under section 28 of the *Act*. The tenant claimed for a reimbursement of her full rent for the entire six-month period that she was residing at the rental unit, totalling \$5,970.00. She also claimed for expenses for moving to her new rental unit, including moving expenses of \$400.00, painting expenses of \$250.00 and pro-rated rent at the new unit for February 2015 of \$407.00.

The tenant stated that before she moved into the rental unit, the landlord did not warn her that a noisy and rude occupant would be living in the unit directly above hers ("upstairs occupant"). The landlord disputed this, stating that the tenant was informed on August 11, 2014 when she came to view the unit, that the previous tenant had vacated due to the loud occupant living above who had a drinking problem. She stated that she signed her tenancy agreement under duress, although she testified that the landlord did not force her to sign the agreement. She claimed that she had to vacate her unit early and breach her fixed term tenancy agreement, despite the substantial liability risk of having to pay a loss of rent to the landlord.

The tenant stated that approximately five weeks after moving into the rental unit, on October 5, 2014, the first incident of loud, profane cursing occurred with the upstairs occupant for approximately 1.5 hours and that she could hear him through the air vents because she lives in an old building. She indicated that another 1.5 hour incident of profane cursing occurred on October 30, 2014. The tenant explained that approximately ten to twelve incidents occurred between November 1 and December 31, 2014. She maintained that on January 3, 2015 she was awakened by the cursing, and that on January 11 and 24, 2015 she could hear loud cursing and yelling for anywhere from 10 minutes to 1.5 hours. She stated that approximately three to five incidents occurred after January 24, 2015 but she did not keep track of these incidents.

The tenant stated that she went to see her doctor on March 19, 2015 and obtained a note on May 7, 2015 regarding this visit. The tenant provided the note for this hearing. The note indicates that the tenant had a stressful situation with the upstairs occupant, that she was having trouble sleeping, decreased appetite and corresponding weight loss, as well as low mood, extreme fatigue and elevated blood pressure during the visit. It further states that she had trouble concentrating and focusing on her studies, and was anxious, worried and fearful for her safety causing her to vacate the rental unit. The tenant stated that

her mood was low due to the demoralizing and profane language being used by the upstairs occupant and that because of her weight loss, she had to give up her vegetarian diet of four years, in order to gain weight. The tenant stated that she did not obtain any medications from her doctor regarding her issues. The landlord responded that the tenant vacated the rental unit by February 27, 2015, so the medical note from March 2015 was a moot issue as it was obtained after she moved out.

The tenant further maintained that while she was able to complete her studies, she was not able to work on unique art projects and suffered a time constraint due to stress. She stated that the most serious incidents with the upstairs occupant occurred in January 2015 so she had to move in February 2015, during her school exams.

The tenant noted that she did not want the upstairs occupant to be evicted but she compiled information for the landlord to be aware of the ongoing issues and disturbances. The tenant provided copies of letters and emails between the parties, regarding these issues. She stated that the landlord advised her to call the police to deal with the upstairs occupant and that because the previous tenant had moved out of the tenant's current unit, it would assist the landlord in getting "leverage" to have the upstairs occupant evicted.

The tenant stated that she only vacated the unit because the landlord failed to deal with the upstairs occupant and the landlord did not advise her that action was being taken or that plans were being made to evict him. The landlord denied this fact stating that the landlord took immediate action to resolve the issue, that communication was always open with the tenant, that the landlord was trying to resolve the situation, that the landlord acted on the tenant's requests, and that the tenant could have vacated earlier if she was in such distress. The landlord indicated that confidential information could not be divulged to the tenant regarding another occupant, but the landlord advised the tenant that every complaint was being investigated. The landlord stated that the tenant mainly provided verbal complaints rather than written complaints, despite the fact that the landlord requested written complaints from the tenant, so that these letters could be provided to the police if necessary.

The tenant said that she found out about the upstairs occupant vacating his unit after she had already given her notice to vacate to the landlord. The landlord stated that the upstairs occupant voluntarily agreed to vacate the rental unit, due to the warning letters issued by the landlord, as a result of the tenant's complaints. The landlord provided a copy of three warning letters from October 9 and 23, 2014 and January 21, 2015 (not 2014, as corrected by the landlord during the hearing). The landlord claimed that the tenant was notified on February 4, 2015 that the upstairs tenant was leaving on February 28, 2015 but the tenant had already given her notice to vacate by the end of January 2015.

The tenant testified that she is entitled to her moving expenses, rent and painting expenses for moving to her new rental unit. The tenant noted that she lived at her previous apartment for 17 years and so she is a long term tenant who does not leave easily. She stated that she vacated on February 19, 2015 instead of at the end of the month, paying a prorated rent at her new unit, because she was worried for her safety. The landlord stated that the landlord has mitigated losses by allowing the tenant to break her fixed term tenancy agreement early without seeking a loss of rent for six months, as the tenancy was supposed to end on August 31, 2015.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. In this situation, the tenant must prove the existence of the damage or loss, and that it

stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage. The tenant must also show that steps were taken to mitigate or minimize the loss being claimed, as per section 7(2) of the *Act*. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the landlord caused her a loss, which affected her right to quiet enjoyment.

In summary, the tenant must satisfy the following four elements:

1. Proof that the loss exists;
2. Proof that the loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss being claimed.

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

While the tenant has found the upstairs occupant's actions upsetting, her unsatisfactory interactions with this occupant are not necessarily subject to intervention by her landlord. Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required.

In this case, the landlord issued two relevant warning letters regarding loud and rude behavior to the upstairs occupant regarding the tenant's complaints and warning of eviction. After the final warning letter on January 21, 2015, the upstairs tenant ultimately agreed to leave voluntarily so a notice to end tenancy was not required. I find that the landlord immediately dealt with the issue, asking the tenant to provide written letters so the situation could be documented. The tenant provided a letter to the landlord in October 2014, after which a violation letter was issued to the upstairs occupant. The tenant provided her next letter to the landlord in January 2015, after which the final violation letter was issued to the upstairs occupant and he then provided notice to move out. The landlord also asked the tenant to contact the police, since the upstairs occupant had mental health issues. I see insufficient evidence to demonstrate that the landlord has failed to take appropriate action to follow up on the tenant's concerns about the upstairs occupant.

On a balance of probabilities and for the reasons stated above, I find that the tenant has not met her burden of proof to show that the landlord caused her a loss of quiet enjoyment of the rental unit and failed to deal with the issue in a timely and appropriate manner. Accordingly, I dismiss the tenant's application

for a monetary order for money owed or for compensation for damage or loss under the *Act, Regulation* or tenancy agreement, without leave to reapply.

As the tenant was unsuccessful in her Application, I find that she is not entitled to recover the \$50.00 filing fee for this Application. Accordingly, the tenant must bear the cost of this filing fee.

Conclusion

The tenant's Application a monetary order for money owed or compensation for damage or loss under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement and to recover the filing fee for this application, is dismissed without leave to reapply.

The tenant's application to recover the security deposit was withdrawn.

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: November 23, 2015

Residential Tenancy Branch