



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This in person hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation – Section 67;
2. An Order for a rent reduction – Section 65; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

At the onset of the hearing the Parties confirmed that the tenancy ended on September 30, 2015. As the tenancy has ended and as the claim for a rent reduction can only be made when paying rent, I dismiss this claim.

The Tenant referred to additional details and a monetary amount that was provided in the latest evidence package received by the Residential Tenancy Branch on October 22, 2015. The Tenant did not amend the application dated June 22, 2015 to include new particulars or a larger monetary claim. I note that the application and supporting evidence provided prior to this date refer only to compensation in relation to a notice to end tenancy for landlord use, moving out compensation and compensation in relation to noise, unauthorized entry and a rent increase.

Rule 2.2 of the Residential Tenancy Branch Rules or Procedure provide that a claim is limited to what is stated in the application. Rule 2.11 provides that an application may be amended however such an amendment must be clearly identified as an amendment and must be provided to the other party and the RTB separately from all other documents. As the Tenant did not indicate anywhere on the late evidence submission that this was intended to be an amendment of the application, I find that the Tenant's claim is restricted to the particulars and monetary amount set out in the June 29, 2015 application. These items are: compensation in relation to a notice to end tenancy for landlord use, moving out compensation and compensation in relation to noise, unauthorized entry and a rent increase.

Although during the hearing I considered evidence from the Tenant in relation to loss of the internet, laundry, parking, the moving out day and harassment, a review of the particulars as set out in the application and evidence packages indicate that these items were not a part of the intimal or amended application of June 22, 2015 and I therefore dismiss the Tenant's claims in relation to these items.

The Landlord states that the last two evidence packages provided to the Residential Tenancy Branch were not provided to the Tenant as the Landlord did not have the Tenant's forwarding address. The materials were reviewed and it was determined that the package setting out the Landlord's evidence to support a monetary claim from the Landlord was not relevant to the Tenant's application and was therefore excluded. The second package contained evidence in relation to the service of a two month notice to end tenancy for landlord's use (the Notice). The Tenant confirmed receiving the Notice dated August 31, 2015 and as such this evidence package does not require further consideration other than in relation to the compensation being sought for having received a notice to end tenancy from the Landlord.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entailed to recovery of the filing fee?

Background and Evidence

The tenancy of a basement unit started on March 1, 2015 and ended on September 30, 2015. Monthly rent of \$800.00 was payable. No security deposit was collected by the Landlord. The Landlord lives in the upper unit.

NOISE

The Tenant states that at the end of April or near the beginning of May 2015 the Landlord started making loud noises in the upper unit during the middle of the night and that this occurred 3-4 times a night and occurred throughout the tenancy. The Tenant states that it was so loud that the police were called on two occasions. The Tenant states that the noises consisted of heavy thumps, furniture dragging, alarms and sudden loud noises from TV's and radio. The Tenant states that despite complaining to the Landlord the noise did not reduce and increased in level during July and August 2015. The Tenant states that the upper Tenants told the Tenants that the Landlord was sending them instructions. The Tenant submits that the stress level was very high and that she lost sleep causing her to experience physical illness.

The Landlord states that she works outside the home during the day and that her son goes to school during the day so no noise is made. The Landlord denies making anything other than normal living sounds. The Landlord states that the Landlord's unit had the sleeping and bathroom areas on the third floor with no bathrooms or bedrooms on the main floor. The Landlord states that the main area over the Tenant's unit is carpeted. The Landlord states that a family did move into the upper unit with the Landlord over July and August 2015 and that the Landlord was not in the country during this time. The Landlord states that the family living in the upper unit only called the Landlord once.

Unauthorized Entry

The Tenant states that during July and August 2015 the upper tenants repeatedly came down to her unit and shouted at her asking her why she doesn't move. The Tenant

states that they would not stop until she shut the door and told them to leave. The Tenant states that she called the police during one such incident. The Landlord states that she has only been at the Tenant's unit twice and that was only to give the Tenant the notices.

The Tenant claims \$2,000.00 for loss of quiet enjoyment and \$2,400 for pain and suffering.

Rent increase

The Parties did not provide any evidence in relation to this item other than the Tenant stating that the Landlord would tell the Tenant that she could get more rent for the unit.

Notice to end tenancy for landlord use

It is noted that the Landlord gave the Tenant a two month notice to end tenancy for landlord use dated August 31, 2015 on the correct form. The Landlord does not dispute that at the end of June 2015 the Landlord served the Tenant with a notice to end tenancy in Chinese. The Tenant states that the Landlord was told that such a notice was incorrect and from that point forward all the problems started. The Tenant agrees that the Tenant was provided with the one month rent compensation of \$800.00.

Moving out compensation

The Tenant states that she made a claim for double the rent and identified in the application as moving out compensation as the Landlord did not use the unit for the purpose stated in the notice to end tenancy for landlord's use.

The Tenant states that after receiving the two month notice in August 2015 the Tenant gave 10 days' notice and moved out of the unit on September 30, 2015. The Tenant states that the Landlord did not take rent for this month in lieu of the one month compensation to be provided for the end of the tenancy. The Tenant states that she claimed this amount in the application.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. As the Tenant was provided with the one month rent compensation for having received a notice to end tenancy for landlord use, I find that this claim is no longer valid and I dismiss the claim for \$800.00. As the Tenant indicates that the claim for \$1,600.00 is in relation to a different use of the rental unit than as stated in the notice to end tenancy for landlord use, as this claim could not have been made at the time of the application, I dismiss this claim with leave to reapply.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to reasonable privacy and freedom from unreasonable disturbance. Given the undisputed evidence that the Landlord was absent from the unit for July and August 2013, and considering the Tenant's evidence of noise and behavior of the upper tenants during this time I find that the Tenant has substantiated on a balance of probabilities that she did suffer a loss of quiet enjoyment and was unreasonably disturbed at least during the period July and August 2015. Given the lack of any supporting evidence of noise prior to these months and considering the Landlord's evidence of only normal noise, I find that the Tenant has not substantiated that the landlord breached the Act prior to July 2015. As a result and considering that there is no medical evidence to support pain and suffering, I find that the Tenant has substantiated only a nominal award of **\$500.00** for the noise and unwelcome and repeated attendance of the upper tenants. Given the Tenant's evidence that when asked the upper tenants left I do not

find that the actions of the upper tenants amounted to any unauthorized entry and I dismiss any claim for compensation in relation to unauthorized entry.

As no evidence was provided relevant to a rent increase I dismiss the claim for compensation in relation to this matter. As the Tenant's application has met with some success, I find that the Tenant is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$550.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$550.00**. If necessary, this order may be filed in the Small Claims 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: November 06, 2015

Residential Tenancy Branch

