



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 353806 BC LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNDC, OLC, ERP, RP*

Introduction:

This hearing was convened in response to the tenant's application for a monetary order for compensation for damage or loss. The tenant also applied for an order directing the landlord to comply with the *Act* and carry out repairs. The tenant filed evidence at the Residential Tenancy Branch Office on December 22, 2015, which is the day before this hearing. The tenant agreed that she had not served the landlord with a copy of this evidence. Accordingly this evidence filed late by the tenant was not used in the making of this decision. The only sheet of evidence that accompanied the tenant's application that was served to the landlord was a statement of the tenant's wages.

At the start of the hearing, the tenant informed me that she had moved out on November 15, 2015. Since the tenancy has ended, the tenant's application for an order directing the landlord to comply with the *Act* and carry out repairs is moot and accordingly dismissed. Therefore this hearing only dealt with the tenant's application for compensation.

Issue(s) to be Decided:

Is the tenant entitled to compensation?

Background and Evidence:

The tenancy began on August 21, 2014 and ended on November 15, 2015. The monthly rent was \$850.00 due on the first day of each month. Prior to moving in, the tenant paid a security deposit and a pet deposit in the total amount of \$850.00.

In reply to my question, the tenant stated that she had not yet provided the landlord with a forwarding address. During the hearing, the tenant provided the landlord with her current address. The landlord was informed that he had 15 days from this date (December 23, 2015) to return the deposits or make application to keep all or a portion of the deposits.

The tenant stated that right from the start of the tenancy in August 2014, she suffered a loss of quiet enjoyment due to noisy neighbours, fire alarms going off, barking dogs, police sirens, flooding on her patio, dirt tracked in by her cats due to the muddy and wet conditions outside and being constantly unwell due to sleep deprivation and dirt being tracked into the rental unit.

The tenant stated that as a result of poor health from lack of sleep and extra cleaning, she was unable to work sufficient hours and therefore incurred a loss of income. The tenant has filed a copy of her income statement to demonstrate that her income declined with time, from the start of tenancy. Based on her loss of income through the tenancy, the tenant is claiming \$4,775.00 as compensation.

The tenant stated that she verbally informed the landlord of all the problems and he did not take action. The landlord stated that upon receiving the tenant's complaints, he spoke with the neighbours regarding the noise disturbances and even took action to evict a couple of occupants.

The landlord agreed that new irrigation was installed in Spring 2015. The tenant reported water pooling on the patio. The landlord stated he visited the tenant upon her complaint and found that the drain was covered with clutter. The tenant denied having clutter obstructing the drain.

In November 2015, the upstairs occupant had a flood which impacted the tenant. The landlord offered the tenant alternative accommodation to have the rental unit repaired. The tenant accepted the accommodation but moved out on November 15, 2015.

The tenant stated that she verbally reported all complaints to the landlord and wrote one letter in September 2015. The tenant did not file a copy of the letter.

Analysis

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 72(2) of the *Act*, requires a party who is claiming compensation for damage or loss to take reasonable steps to mitigate the loss. In these circumstances I find that the tenant could have filed an application for dispute resolution long before the end of the tenancy, in which she could have requested an order requiring the landlord to repair the flooding situation and remedy the noise disturbances.

The tenant stated that she verbally informed the landlord but continued to occupy the rental unit without taking further action. The tenant wrote one complaint in September 2015 after more than one year, since the start of tenancy.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy or there has been inaction on the part of the landlord which allows physical interference by an outside or external force which is within the landlord's power to control. Such interference might include intentionally removing or restricting services to the tenant.

In this case, I find that the landlord took action when the tenant complained about noise disturbances. The tenant stated that since she moved into this rental unit, she was forced to work less hours due to fatigue and illness resulting from sleep deprivation and increased cleaning of dirt tracked in by her pets. The tenant has filed an income statement showing that there is a decrease in income with time since the start of tenancy. However the tenant has not provided sufficient evidence to link the loss of income to the living situation in the rental unit.

I therefore find that she is not entitled to compensation for the loss of the quiet enjoyment of her rental unit.

Conclusion:

The tenant's application is dismissed.

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: December 23, 2015

Residential Tenancy Branch

