Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR, FF

Introduction

This hearing dealt with a tenant's amended application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; orders for repairs; and, authorization to reduce rent payable. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The tenant confirmed that he was representing both named tenants. The person assisting the landlord (referred to by initials MK) questioned the tenant's authority to represent both tenants and whether any orders would be binding against the female tenant not in attendance. The tenant pointed out that many of the written submissions were authored by the female tenant and explained that the female tenant was unable to participate in the hearing due to other commitments. The application and the purpose of the hearing, which was to have orders issued against the landlord and not the tenants, was reviewed and explained to MK.

I noted that the tenant had included a copy of a 1 Month Notice to End Tenancy for Cause in the evidence package. The tenants did not amend the application to indicate they were seeking to dispute the Notice in a manner that complies with the Rules of Procedure but the tenants had indicated so in a written submission. The Notice was dated October 1, 2015 and received by the tenant on October 1, 2015 but had an effective date of October 31, 2015. The landlord claimed she signed the Notice and posted the Notice on the tenants' door September 30, 2015 but for some reason she post-dated it for October 1, 2015. Since posting a document on a door is deemed to be received three days later under section 90 of the Act, the parties were informed that in any event, the stated effective date of the Notice was non-compliant and automatically

changed to read November 30, 2015 pursuant to section 53 of the Act. Nevertheless, I found it unnecessary to further consider whether the tenants' application should be amended to include a disputed Notice to End Tenancy since both parties confirmed that the tenants vacated the rental unit near the end of November 2015.

Having heard the tenants have vacated the rental unit since filing their application I also found the tenants' requests for repair orders and authorization to reduce rent payable to be moot. Therefore, I determined that the only issue to resolve is the tenants' monetary claim.

It should be noted that the animosity between the parties was palpable throughout most of the hearing and the parties were reminded a number of times to refrain from making statements that were inflammatory or irrelevant to the matter at hand. The conduct of MK was especially troubling considering that on a number of occasions he could be heard prompting the landlord during her direct testimony; he made irrelevant statements which proved to antagonize and inflame the tenant including use a slang term for describing female genitalia. MK claimed he could not understand how his conduct was inflammatory and countered with accusations that I was being abusive to the parties. MK was asked to leave the hearing as his presence was more of a hindrance than helpful to resolving this dispute. I was unconvinced he had actually left but he was not heard thereafter which was sufficient to continue the proceedings.

Issue(s) to be Decided

Have the tenants established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy was set to commence September 1, 2015 although the tenants were provided possession of the rental unit a few days early. The tenants were required to pay rent of $1,000.00 for a fixed term of six months. The tenants paid a security deposit of $500.00 and a pet damage deposit of $250.00. The tenants vacated the rental unit November 25, 2015 and returned possession of the unit to the landlord on November 26 or 27, 2015.

The rental unit is a two bedroom basement suite and the landlord resides in the unit above. The two tenants lived in the rental unit with a child and dog.

Below, I have summarized the tenants' claims for compensation against the landlord and the landlord's responses.

A. Noisy septic pump

The tenants assert that a septic pump is located on the exterior of their bedroom wall and that it turned on with a loud bang every 15 – 30 minutes. As a consequence, the tenant submitted that he was unable to sleep in the bedroom while residing at the rental unit. The tenants seek compensation of $500.00 per month, or 50% of the monthly rent, for the loss of quiet enjoyment.

It was undisputed that the tenants complained of the issue to the landlord many times and that the landlord called in two professionals to inspect and investigate the complaint. The first being a plumber and the second being a septic company.

The landlord submitted that both companies advised her that the system was operating as it was designed and there were no issues. One inspection involved hooking the septic system up to a computer in an attempt to determine how frequently the system was activating. The landlord also stated that she has been renting the basement suite for seven years without any issue concerning the septic pump. Further, the landlord's bedroom is above the tenants' bedroom and that she was not disturbed by sounds the pump makes.

The landlord obtained a letter from the septic company and shared it with the tenants. The tenant acknowledged receipt of the letter and stated that he contacted the septic company but that they would not divulge further information to him since he was not the property owner.

In the letter from the septic company, the writer describes the reason for attending the property as being a compliant of "loud starting of the pumps". The writer describes the sound as being related to electrical starter motor and the sound emanating from such motors as being a snap or muffled clunk when the motor starts. The writer describes the age of the system as being at least five years and no history of prior complaints. The writer describes the services performed to inspect the system over three dates in September 2015 and summarizes that the system is operational without defects for which there "is no quick fix to satisfy your complaint."

The tenant was of the position that the problem lies in the location of the pump(s) in this case since it is mounted to a wall of the house and such pumps are usually located in a separate shed.

B. Lack of washing machine

The tenant submitted that the washing machine only worked on one cycle at the start of the tenancy and then in mid-October 2015 it stopped working completely. The tenant complained of the issue to the landlord who indicated she would call in a plumber. The tenant pointed out that it is an appliance repair person that needed to be called. The tenant explained that since the landlord did not provide a specific time as to when a repair person would be attending the unit, and the tenant has a dog in the unit that "does not like strangers" and could bite, the tenant moved the washing machine outside so that it could be tested and repaired by hooking up a garden hose. The tenant submitted that the landlord never did have the washing machine fixed and it was subsequently moved into the garage. The tenant is seeking compensation of $150.00, or 15% of the monthly rent, for lack of the laundry machines from October 14, 2015. The tenant submitted that his family does a lot of laundry and they had to use a laundromat several times.

Included in the evidence package was an email from a plumbing company. The plumber points out that the plumbing company can inspect the functionality of the plumping system but that if the defect is with the washing machine it would require repair by an appliance repair company. The plumber goes on to say that either way the appliance needs to be in place for any diagnostics to be completed. It appears that the landlord gave the tenants a copy of the email and below she wrote that she would be "putting them back in tomorrow and [name] will be her on Monday at some point to check them."

The landlord stated that she was unaware the washing machine was not working until she saw it in the carport. The landlord enlisted two men to help her move it back into the unit so that she could have it repaired but the tenant refused entry. The landlord claimed that after the tenants vacated the rental unit the washing machine was returned to the rental unit and that it is functional.

The tenant acknowledged that the landlord called two men to the property and that he did not permit the men entry into the unit because he was of the position they were there to intimidate him.

With respect to both claims made by the tenants the landlord speculated that the tenants were fabricated the issues in an attempt to end their fixed term tenancy early. The tenant acknowledged that he spoke to the landlord about ending the tenancy and that she had indicated she would hold them responsible for the duration of the fixed term. During the hearing; however, the landlord stated that was releasing them from the fixed term. Both parties attempted to raise issues with respect to the security deposit. As at the time of the hearing, the issue of the security deposit was premature; however, the parties were given the opportunity to include the security deposit in their settlement discussions. No settlement was reached during the hearing and I have made findings in the section below with respect to the monetary claims made by the tenants by way of their application. The security deposit may be included in another application for dispute Resolution if necessary.

Analysis

A party that makes an application for monetary compensation against another party the applicant has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Upon consideration of everything before me, I provide the following findings and reasons with respect to each of the tenants' claims against the landlord.

A. Noisy septic pump

Under section 28 of the Act every tenant is entitled to quiet enjoyment. The right to quiet enjoyment incudes freedom from unreasonable disturbance. As the applicants, the tenants bear the burden to prove that the noise from the septic pump was not just disturbing but "unreasonably" disturbing and the landlord failed to rectify the matter in a

timely manner. Where a party alleges loss of quiet enjoyment due to noise, to meet the threshold of “unreasonably disturbing”, I find it reasonable that the applicant is able to demonstrate the noise is very loud and/or ongoing.

The tenants alleged that the pump ran every 15 to 30 minutes with a very loud bang that could be heard in their bedroom. The landlord countered this position with testimony that she is not disturbed by the pump in her bedroom which is above the tenants’ bedroom and the landlord’s septic company described the sound as being a “snap” or a “muffled clunk”. It would appear; however, that neither the landlord nor the contractors she enlisted to investigate the issue entered the rental unit to assess the level of noise that could be heard in the tenants’ bedroom. Nevertheless, the landlord had presented the tenants with her documentary evidence from the septic company and the tenants did not gather or submit further evidence to support their claims such as an audio recording or presentation of a witness. I find that in the absence of further evidence from the tenants, the conflicting evidence that has been presented to me is insufficient for me to conclude the tenants were “unreasonably disturbed” by the sound of the septic pump. Therefore, I find the tenants failed to prove this portion of their claim and it is dismissed.

B. Lack of washing machine

Upon review of the notice to enter issued by the landlord I find her notice was non-compliant. Section 29 of the Act provides for all of the information that must be contained in a notice of entry and the landlord must provide the time of entry in the notice. The notice issued by the landlord included the date and reason for entry but not the time or even a range of time anticipated. Accordingly, I appreciate the tenants’ concerns about the insufficient notice received from the landlord considering they had a dog in the unit which may need to be removed or restrained during entry by the landlord or a contractor.

Despite the landlord’s insufficient notice of entry, I find the tenant did not have the right under the Act to remove the washing machine from the rental unit. Doing so could have damaged the machine and, as seen in the email from the landlord’s plumber, the machine should be in place so as to diagnose the problem. Accordingly, I find the tenant’s actions contributed to the lack of a washing machine in the rental unit. Further exasperating the problem is that the tenant refused entry to the landlord and the two men she enlisted to return the washing machine to the rental unit. I find it reasonable to expect that a tenant who seeks to have a functional washing machine in their unit would accommodate the landlord’s efforts especially when I consider that the tenant was home and could take appropriate action with respect to restraining or removing his dog.

While I accept that it is reasonably likely that the washing machine was not working properly I find the tenants did not act reasonably to minimize their loss in removing the machine from the unit and then refusing entry on the day the landlord tried to have the washing machine returned to the unit. Therefore, I dismiss this portion of the tenant's claim.

For the reasons given above, I have dismissed the tenants' monetary claims against the landlord. It is important; however, to distinguish that I found the tenants' claims against the landlord to have some merit but they were insufficient to establish an entitlement to compensation as claimed. Despite the landlord's assertion that she co-manages 50 rental units, the landlord would be well served to familiarize herself with a landlord's obligations under the Act, especially section 29.

Given the palpable animosity between the parties I am of the view that the end of this tenancy was the best resolution to the parties' grievances with each other. In keeping with the landlord's statement during the hearing that she was releasing the tenants from their fixed term tenancy, **pursuant to my authority under section 62 of the Act, I order the tenancy to be at an end and the tenants are not obligated to pay any rent or loss of rent to the landlord for the period after November 2015 despite the fixed term tenancy agreement.**

Conclusion

The tenants' application has been dismissed. Pursuant to section 62 of the Act, I have ordered the tenancy to be at an end and the landlord is precluded from seeking rent or loss of rent from the tenants for any months after November 2015.

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 29, 2015

Residential Tenancy Branch