



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the application.

Both tenants attended the hearing, one of whom gave affirmed testimony. However, despite being served with the Tenant's Application for Dispute Resolution and notice of this hearing by registered mail on January 29, 2016 no one for the landlord attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the tenants. One of the tenants testified that the landlord was served on that date and in that manner, and was also served by registered mail on February 12, 2016 with the Amendment to the tenants' Application. The tenants have provided a copy of a Canada Post cash register receipt dated January 29, 2016 along with a Registered Domestic Customer Receipt addressed to the landlord. The tenant also testified that the address it was sent to is the address of the landlord as shown on the tenancy agreement and on a notice given by the landlord, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

At the commencement of the hearing one of the tenants testified that the landlord named in the Tenant's Application for Dispute Resolution is the same person as the landlord named in the tenancy agreement, although the first names differ. The landlord uses both first names. The parties had also been to Arbitration on the landlord's application, which names the landlord the same as the Tenant's Application for Dispute Resolution. I hereby amend the style of cause in this matter to show both names of the landlord, and the frontal page of this Decision sets out that amendment.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this month-to-month tenancy began on October 6, 2014 and ended on April 29, 2015. Rent in the amount of \$1,200.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$600.00 which was returned to the tenants more than a month after the tenancy ended, however the tenant does not recall when. The rental unit is the upper level of a house that also contained a basement suite. A copy of the tenancy agreement has been provided.

The tenant further testified that on April 13, 2015 the landlord posted to the door of the rental unit a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided. The notice is dated April 16, 2015 and contains an effective date of vacancy of June 30, 2015. The reason for issuing the notice is: Rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse.

On April 16, 2015 the tenants gave notice to vacate earlier by posting a notice to the door of the landlord's address as contained in the landlord's notice, and a copy of the tenant's notice has also been provided. It is dated April 16, 2015 and is signed by both tenants, and contains a forwarding address for the tenants. It also states that the rental unit will be vacant by 1:00 p.m. on April 29, 2015. The tenants had paid rent for the month of April, 2015, however the landlord returned it when the tenants moved out.

The landlord has not moved into the rental unit. The tenant's husband drives by there on his way to work and noticed a family who appeared to be living in the rental unit. The tenant went there to get any mail that may have arrived for the tenants, and the residents confirmed they lived there. The tenant looked up the address on the internet and found a home business selling vintage items. The rental unit is obviously rented to other tenants, and the landlord has not used the rental unit for the purpose contained in the landlord's notice. The tenants claim double the monthly rent, or \$2,400.00.

The tenant further testified that she told the landlord in December, 2014 that the tenants would be away from December 26 to January 15, 2015 and that a friend would be house-sitting and looking after the tenants' cat. The landlord was aggravated by that, and a week before the flight, the landlord called the tenants irate and forbidding anyone to stay at the rental unit while the tenants were gone. The landlord said he would stay there and look after the cat. The tenants disagreed, but the landlord refused to allow a male friend to stay there. The flight was booked, and the tenants had to leave, discovering while away that the landlord was staying full-time in the rental unit. The tenants called the landlord before returning home to ensure he would not be there, but when the tenants arrived home at 2:30 a.m. the landlord's car was in the driveway, he was there in his pyjamas and acted like he was their grandfather or something. He said he was staying, and the tenant's husband said it was not acceptable. The landlord went into the den and closed the door. The next morning the landlord had left early. The tenants had

no privacy, paid rent to the landlord, and the landlord lived in the rental unit without the consent of the tenants. The tenants claim back \$1,200.00 for January's rent.

The tenant also testified that the landlord showed up at the rental unit all the time. When the tenants' moving truck arrived at the beginning of the tenancy some of the landlord's furniture and belongings were in the rental unit. Instead of moving the items out, the landlord told the tenants that he had decided that he would use the den and 2 of the 3 bedrooms and one of the 3 bathrooms in the rental unit. He even left food in the kitchen. Photographs have been provided. The tenant moved some of the landlord's items into the mud-room, and the landlord told her not to touch his stuff. The tenants did not agree to live with the landlord, but rented the entire rental unit.

The tenant talked to a friend of the landlord, who is also an experienced landlord. He agreed to talk to the landlord, and then called the tenant stating that the landlord was refusing to budge, and since rent was cheap he felt justified in keeping space for himself, and that keeping his belongings in the rental unit was his way of ensuring he had the right to enter the rental unit. The landlord did not sleep at the rental unit, but used about 65% of the space. The tenants had to put some of their belongings in the garage and only had one bedroom. The tenants claim back half of the rent for the 7 month tenancy, or \$4,200.00 for loss of that space.

The tenants also claim \$500.00 per month for the 7 month tenancy, or \$3,500.00 for loss of quiet enjoyment. The tenant testified that the landlord kept arriving without notice, at least twice per week and would be forceful. The tenants told him he needed to give 24 hours notice, but the landlord was unreasonable and told the tenants he wanted them to move out. The landlord applied for Arbitration, and a copy of the frontal and final pages of a Decision of the director has been provided. It shows that the hearing was convened on March 24, 2015 and the Decision is dated March 26, 2015. It shows that the landlord and the tenants attended the hearing on a landlord's application under Section 56 of the *Residential Tenancy Act*. The conclusion states: "The Landlord's application is dismissed, with the effect that the tenancy continues until ended in accordance with the Act." The tenant testified that the landlord was not able to substantiate any of the accusations and attempted to obtain an early end to the tenancy.

The tenants also claim aggravated damages in the amount of \$6,000.00 for the term of January through April, 2015. The tenants were newly weds at the beginning of the tenancy, and the tenant was pregnant during the tenancy. The landlord wanted the tenants to move out and made it very traumatic for the tenant. On one occasion in February, 2015 the landlord waited at the rental unit while the tenants were not at home. Upon their arrival, the landlord came out of the house. The tenants didn't want the confrontation so tried to leave, and the landlord laid down in the driveway to prevent the tenants from driving away and he wouldn't move.

The landlord circled the rental unit or arrived early in the morning after the tenant's husband's truck was not in the driveway, and would look in the windows. On March 3, 2015 the landlord did so and saw the tenant getting dressed. The landlord also saw the tenant naked, and the tenant called 911. The second time, the landlord stood outside the window looking into the

rental unit long enough for the tenant to get her camera and take a photograph, a copy of which has been provided. Police were called, and the landlord told them he was working in the yard, but no work was done.

The next day, the landlord started going into the basement suite, which was vacant and which the landlord uses as his mailing address, and began slamming doors. It was disturbing and really upset the tenant. The tenant was very pregnant and was admitted to a facility for reproductive mental health, which is for pregnant women who cannot take medication. The landlord caused extreme anxiety and depression throughout the tenancy. It had to stop. The tenant's heart rate was elevated and it was awful. The landlord didn't care, but just wanted the tenants to leave, saying every month that they stayed, he could have been making more money.

Analysis

Firstly, with respect to the tenants' claim double the monthly rent, or \$2,400.00, the *Residential Tenancy Act* specifies that if a landlord gives a 2 Month Notice to End Tenancy for Landlord's Use of Property and the landlord does not use the property for the purpose stated in that notice within a reasonable time after the end of the tenancy, the landlord must repay the tenants double the monthly rent. In this case, I accept the testimony of the tenant that the tenancy ended on April 29, 2015 and the landlord has re-rented the rental unit. Therefore, I find that the tenants have established the claim for \$2,400.00.

The tenants also claim back \$1,200.00 for January's rent for the landlord moving into the rental unit while the tenants were away on vacation. I have reviewed the tenancy agreement which states nothing about the landlord sharing space or having unlimited access to the rental unit. I accept the testimony of the tenant. A landlord has no right to enter a rental unit that is occupied by a tenant except in certain situations, which are specified in the *Act*. None of those situations includes house-sitting, nor is there any provision for a landlord to unreasonably restrict access to the tenants' guest or house-sitter. Nor may a landlord insist on house-sitting or cat sitting for a tenant. I find that the landlord, in the absence of any evidence to the contrary, has breached the *Act* and the tenancy agreement, and the tenants have established a claim for recovery of rent for the period of December 26, 2015 to January 16, 2016 in the amount of \$812.90 for the landlord unlawfully residing in the rental unit. ($\$1,200.00 / 31 \times 21 \text{ days} = \812.90)

In considering the tenants' claim of \$4,200.00 for loss of space and storage, the tenancy agreement states that the rental unit is the upper portion of the house and the landlord's address is the lower portion of the house. The tenant testified that the landlord took over 2 of the 3 bedrooms, the den and 1 of the 3 bathrooms which amounted to about 65% of the rented living space. I accept that testimony, and find that the tenants' claim for 50% of the rent paid for the 7 months of the tenancy is reasonable.

A landlord is required to afford tenants with their fundamental right to quiet enjoyment of a rental unit. The rental unit is the tenants' home and that's what they pay rent for. I have reviewed the

photographs showing the landlord's personal belongings in the rental unit and showing the landlord looking in the window of the rental unit, and I find it despicable that a landlord would treat tenants in a fashion that has obviously been the case. The tenants have claimed a monetary amount for loss of quiet enjoyment and another monetary amount for aggravated damages. I refer to Residential Tenancy Policy Guideline #16 – Claims in Damages – which states, in part:

“Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

“The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.

“The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.

“They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

“An arbitrator does not have the authority to award punitive damages, to punish the respondent.

“If a claim is made by the tenant for loss of quiet enjoyment, the arbitrator may consider the following criteria in determining the amount of damages:

- the amount of disruption suffered by the tenant.
- the reason for the disruption.
- if there was any benefit to the tenant for the disruption.
- whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant.”

In this case, I find that the tenant's health, that of her unborn child, the tenant's husband and their living conditions were severely aggravated by the landlord's actions and failure to comply with the *Act* or the tenancy agreement. I find that the tenants have established aggravated damages for loss of quiet enjoyment of the rental unit and the disruption to the tenants' health and well-being in the amount of \$6,000.00.

In summary, I find that the tenants have established the following claims:

- \$2,400.00 - double the monthly rent for the landlord's failure to use the rental unit for the purpose set out in the 2 Month Notice to End Tenancy for Landlord's Use of Property;

- \$812.90 for the landlord unlawfully residing in the rental unit while the tenants were away on vacation;
- \$4,200.00 for loss of the space the parties contracted for;
- \$6,000.00 for aggravated damages for loss of quiet enjoyment of the rental unit and disruption to the tenants' health and well-being.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$13,512.90.

This order is final and binding and may be enforced.

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: March 31, 2016

Residential Tenancy Branch