



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTHERN PROPERTY
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, O, FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- other remedy, specifically an order evicting a neighboring tenant of the landlord;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the tenant entitled to the other remedy sought, specifically an order evicting a neighboring tenant of the landlord?

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 the details of the submissions and/or arguments are reproduced here.

The rental unit is an apartment in a residential apartment building. A written tenancy agreement was entered into and signed by the parties on August 1, 2015. A copy of the written agreement was provided on file. The tenancy began on August 1, 2015 with a

monthly rent of \$750.00 payable on the 1st day of each month. A security deposit in the amount of \$375.00 and a pet deposit of \$200.00 were collected at the start of the tenancy. The tenancy was for a one year fixed term expiring on July 31, 2016.

The tenant's claim is for a monetary award in the amount of \$10,000.00 as compensation for emotional and mental stress. The tenant argues that the emotional and mental stress is in relation to repeated complaints filed against her from a neighboring tenant directly below her unit. The tenant alleges the neighboring tenant complains about everyday living noise and the landlord takes her side without investigating or hearing the tenant's side. The tenant claims she has to live on pins and needles and is afraid to make any noise in fear of being evicted. She has received two noise complaint warnings during her 11 month tenancy. The landlord has not issued any Notice to End Tenancy on the grounds of these warning letters.

The tenant is also requesting an order for the neighboring tenant to be evicted.

The landlord argues there is no merit to the tenant's claim. The tenant has been issued two warning letters over the course of the 11 month tenancy and this is the only disciplinary action taken against the tenant. The landlord testified that they don't just send out breach letters for a single complaint. They treat all tenants equally and try to resolve issues to the best of their abilities. The landlord took appropriate actions to replace/repair any requests for deficiencies identified by the tenant over the course of her tenancy.

Analysis

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline #6 "Entitlement to Quiet Enjoyment" provides the following guidance:

In order to prove a breach of the entitlement to quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of

the rental premises. This includes situations in which the landlord has directly caused the interference or was aware of the interference but failed to take reasonable steps to correct it. It is also necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. Temporary discomfort or inconvenience does not constitute a basis for a breach under this section. In determining the amount by which the value of the tenancy has been reduced, consideration will be given to the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation existed.

The tenant has not provided sufficient evidence either by way of her oral testimony or written submissions to support a finding that there has been substantial interference with her ordinary and lawful enjoyment of the rental premises. The tenant's principal argument in support of her claim for emotional damages was concerns with the breach letters issued by the landlord. Aside from issuing these warning letters the landlord did not take any action to evict the tenant on the grounds of these warnings. Had the landlord issued an eviction notice, the tenant's recourse under the Act would be to file an application to dispute the notice to end tenancy. I find the issuing of two warning letters to the tenant by the landlord in response to noise complaints received over a period of 11 months, whether justified or not, is not sufficient to make a finding that a breach of the tenant's entitlement to quiet enjoyment has occurred.

With respect to the tenant's application to have the neighboring tenant evicted, I have no authority under the Act to make such an order.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: July 08, 2016

Residential Tenancy Branch

