



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on September 2, 2016 for:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on August 4, 2016 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant's evidence that the Landlord was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. As the Landlord did not attend the hearing and pursue its own application I dismiss the Landlord's application. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on August 29, 2014 and ended on August 31, 2016. The Landlord's reside in the upper floor of the house and the Tenants reside in one of two basement units. Rent of \$925.00 was payable monthly with an extra \$15.00 for the rental of a pvr. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit. The security deposit has been returned to the Tenants.

The Tenant states that at approximately 9:00 a.m. on June 18, 2016 the female Landlord and the Landlord's children were heard screaming in the upper unit. The Tenants and their 2 year old child became very concerned and upset. The male Tenant then intervened in what appeared to be the male Landlord's assault of the female Landlord. The male Tenant was

assaulted in the process. Following this incident the male Landlord was arrested and released later with a restraining order to have no contact with the Tenants.

Between the date of the incident and July 23, 2016 the Landlords served a notice to end tenancy for cause and then withdrew it 2 days later. There was no reason indicated on the Landlord's notice to end tenancy for cause and there was never any basis for the Landlords to end the tenancy this way. The Tenant's feel that the Landlord should have served then with a two month notice to end the tenancy for landlord's use and given the Tenants one month compensation. The Landlords also entered the unit without notice to the Tenant on one occasion while the Tenant was in the shower, failed to mow the lawn where the Tenant's child played, disallowed their children from playing with the Tenant's child whereas previously the children had been close, dismantled the child's swing, informed the Tenants that their access to the laundry would be changed and told the Tenants that they had to remove their belongings from the garage where the Tenants had been storing their belongings since the onset of the tenancy. The Tenants recorded the Landlord telling the Tenants that if the Tenants gave notice to move out of the unit the Landlord would stop harassing the Tenants. The male Landlord breached the restraining order during this time as well by being at the Tenants' unit.

The behavior of the Landlords caused the Tenants to be very afraid and stressed. Their child was significantly affected by the change in the Landlord's behavior where the Landlord's children were no longer allowed to play with the Tenant's child. Several months prior to the incident of the Landlord's violence, the male Tenant had experienced a heart attack. Given the stress, harassment and fear the Tenants felt they had no choice but to end the tenancy and on July 23, 2016 the Tenants gave their notice to end the tenancy for the end of August 2016. The Tenants claim \$2,312.50 for loss of quiet enjoyment for the period June 18 to August 30, 2016.

The Tenants moved out of the unit and into a smaller unit. The Tenants no longer have room for all their belongings and claim \$1,338.75 for the cost of storing their belongings for 6 months. The Tenants have not yet placed their belongings into storage.

As a result of the male Tenant's arm being injured during the incident the Tenant could not operate his arm during a welding test. The Tenant claims \$200.00 for the cost of taking another test.

Cable and internet are provided with the rent under the terms of the tenancy. During the tenancy the Landlord charged the Tenant for portions of the cable and internet costs. The Tenants claim a return of the overpaid amount of \$232.39.

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.

This section further provides that the claiming party must do whatever is reasonable to minimize the damage or loss.

As the Tenants have not incurred any cost for storage I find that the Tenants have not substantiated the loss claimed in relation to storage and I dismiss this claim.

As the incident involving the assault is not a tenancy matter but a criminal matter I dismiss the Tenant's claim for compensation in relation to the assault on the Tenant, including the claim for compensation as a result of physical injuries that prevented the Tenant's from taking the welding test. The Tenant may wish to enquire with the Crime Victims Program to deal with this matter.

Given the terms of the tenancy agreement and based on the undisputed evidence of over payment for cable and internet I find that the Tenants are entitled to the return of **\$232.29**.

Accepting the Tenant's undisputed evidence of the Landlord's behavior and actions I find that the Tenant has substantiated that the Landlord breached their right to quiet enjoyment of the unit and that the Tenants acted reasonably to mitigate those losses by moving out of the unit. Considering that a portion of the amount claimed would be related to the incident itself and not compensable as set out above and considering that the Tenants still had use of the unit, I find that the Tenants are only entitled to a reduced amount of **\$1,850.00**. I calculate this amount as the equivalent of two month's rent.

As the Tenants have been largely successful with its claims I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,182.29**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,182.29**. 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: September 30, 2016

Residential Tenancy Branch