Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with the tenants' application for a Monetary Order against the landlords for damage or loss under the Act, regulations or tenancy agreement. 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

1. Service of hearing documents

At the commencement of the hearing I explored service of hearing documents with the parties. I heard that the tenants did not serve each of the landlords separately; however, both landlords confirmed that they had the opportunity to review the tenants' claims against each of them and they had no object to being deemed sufficiently served. Accordingly, I deemed the landlords to be sufficiently served with the tenants' Application and other documentation and I have considered the tenants' documentary evidence in making this decision.

As to service of the landlords' written response and evidence, the landlords testified that they mailed the documents to the tenants in mid-August 2016 via regular mail. The tenants stated they did not receive the landlords' hearing documents. Although regular mail is an acceptable method of serving a written response and evidence I must be satisfied that service occurred. The party serving documents bears the burden to prove service occurred. In the absence of any proof to demonstrate the landlords' documents were served upon the tenants I was unable to conclude the tenants received the landlords' documentation and I excluded their evidence from further consideration. However, as the parties were informed at the hearing, the landlords would be provided the full opportunity to provide their position and evidence orally during the hearing.

2. Jurisdiction to resolve dispute

The tenants' monetary claims against the landlords consisted of two components. One of the components was a request that the landlords compensate the tenants $12,500.00 because they were evicted from a subsequent rental unit by the landlord of that property. The tenants were of the position that the female landlord played a role in the subsequent landlord succeeding in having the tenants evicted from that property. I did not seek a response from the landlords as I found that I did not have authority to hear this matter, for the reasons provided below.

I informed the parties that in order to succeed in a monetary claim filed under the Act, the applicant must establish that the other party breached the tenancy agreement, the Act or the Residential Tenancy Regulations and that just because two parties may have, or had, a landlord/tenant relationship at one time does not automatically mean that any and all disputes they may have are to be resolved by the Residential Tenancy Branch. I noted that the tenants identified the rental unit as the dispute address on their Application but this portion of the tenants' claim does not pertain to the rental unit or the tenancy for the rental unit. Accordingly, I found that the claim is unrelated to a breach of the tenancy agreement the tenants had with the landlords. I requested the tenant point to a section of the Act or Regulations the landlords breached with respect to the subsequent eviction from another property and the tenants were unable to do so. Therefore, I was of the position that this was a dispute over which I do not have jurisdiction to resolve and I declined to further consider this component of the tenants' claim against the landlords.

In light of the above, I informed the parties that I would proceed to hear the tenants' claims for loss of quiet enjoyment of the rental unit as I was satisfied that the tenants were pointing to a breach of the Act by the landlords during their tenancy at the rental unit.

Issue(s) to be Decided

Are the tenants entitled to compensation for damage or loss under the Act, regulations or tenancy agreement from the landlords as claimed?

Background and Evidence

The tenancy started March 1, 2012 and ended October 1, 2014. The tenants were required to pay rent of $1,700.00 on the first day of every month during the tenancy.

The rental unit was the upper floor of a house and the lower level had a suite that was also tenanted.

The tenants claim to have suffered loss of quiet enjoyment for 15 months of their tenancy while the lower unit was occupied by other tenants. The tenants seek compensation of $500.00 per month for 15 months, or $7,500.00, from the landlords.

The tenants identified the 15 months as being the months of March 2012 through July 2013. The tenants testified that the lower suite tenant was intimidating and abusive toward the tenants. Such conduct included yelling aggressively at the tenant(s) while drunk and banging on the ceiling of the lower unit while the tenants watched movies on a number of occasions. The tenants were unable to provide any specific dates during the hearing.

The first time the tenants raised the above described issues with the landlords was by way of an email sent June 1, 2012 and in response to an email the male landlord had sent to the tenants on May 31, 2012. The landlord's email had described complaints the landlords had received from the lower suite tenants about the conduct of the tenants and the landlord put the tenants on notice that such behaviour may be grounds for eviction. The tenants provided copies of emails exchanged between the landlords and tenants in late May 2012 and ealy June 2012. The parties also provided consistent testimony that the male tenant and the male landlord met with each other at a coffee shop in June 2012 to discuss the situation.

According to the landlords, they acknowledged and apologized to the tenants for accepting the complaints of the lower tenant without first investigating the complaints and having a discussion with the tenants. The landlords emailed an apology to the tenants on June 2, 2012.
The landlords explained that they were receiving complaints from both sets of tenants about the other tenants and that they spoke with both sets of tenants and requested that they notify them of their concerns in writing.

I noted that the next communication from the tenants to the landlords concerning the conduct of the lower suite tenant appeared to be in May 2013. The parties confirmed that to be the case and the landlords stated that took the absence of further complaints from the tenants to be an indication that the issues had settled down. The female tenant explained that they did not make another complaint to the landlords until May 2013 as they did not want to "rock the boat".

In May 2013 the tenant and female landlord had a meeting and the tenant expressed his concerns about the conduct of the lower suite tenant again. The landlord requested the tenant put his concerns in writing, which he did. The tenant followed up this meeting with a letter addressed to the landlord dated May 18, 2013. In the letter, the tenant indicates that he will cease having any communication with the lower suite tenants. The landlords testified that they considered the two sets of tenants to be incompatible and they had another discussion with the lower suite tenants and shortly thereafter the lower suite tenants gave notice to end their tenancy.

As to the reason(s) the tenants were making a claim for compensation against the landlords nearly four years after the incidents started the tenant explained that the issues were “complicated” and because they had also been dealing with an eviction from a subsequent property. The tenants also appeared to take issue with the landlords not providing them with copies of any written communication to the lower suite tenant to demonstrate the landlords “admonished” him for his behaviour.

The landlords pointed out that when this tenancy came to an end it was peaceable and uneventful and noted that they heard nothing more until after the tenants were evicted from their subsequent rental unit by a different landlord.

In support of their claim for loss of quiet enjoyment, the tenants also submitted that the landlord showed up at the residential property frequently, usually once a week, and without advance notice. The tenant described the landlord’s activities as checking the garden, irrigation system, chimney, shed, and the like. The tenants acknowledged that they did not communicate to the landlord that they found such activities to be bothersome.

The landlords acknowledged that at times the landlord did attend the property on occasion, in the common areas, to check on its condition but that it was not once as frequent as once per week as described by the tenants. The landlords testified that at no time did they enter the rental unit without consent or notice and the tenants did not indicate to them that they had any issue with the landlord coming to the property from time to time.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party 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.

Under section 28 of the Act, every tenant has the right to quiet enjoyment. This right includes freedom from unreasonable disturbance and lawful use of common areas without significant interference. The tenants before me were primarily focused on the actions of the lower suite tenant in their submissions to me. While that is one component of establishing that they suffered a loss of quiet enjoyment, in order to establish that the landlords breach the tenants' right to quiet enjoyment the tenants must also establish that the landlords knew the tenants were suffering from unreasonable disturbances or significant interferences and did not take reasonable action to correct the situation. As provided under Residential Tenancy Policy Guideline 2: *Entitlement to Quiet Enjoyment*, a landlord may be in breach of a tenant's right to quiet enjoyment if directly involved in the disturbance or interference or where the landlord is aware that the tenant is being unreasonably disturbed by another person and does not take reasonable action to correct the situation.

In this case, the landlords were receiving complaints from the tenants in the lower suite concerning the tenants in the upper suite and vice versa. It would appear that the first tenants to complain to the landlords were the lower suite tenants, which resulted in the landlord's email to the tenants on May 31, 2012. The tenant responded to that email by lodging complaints against the lower suite tenants on June 1, 2012. Since the tenants did not raise an issue to the landlords until June 2012 I do not give further consider the tenants request for compensation from the landlord for the months preceding June 2012.

When the female landlord became involved on June 2, 2012 she apologized to the tenants for the email of May 31, 2012 and shortly afterward the male landlord and the male tenant met to discuss the situation. I heard that after the landlord and tenant met in June 2012 the landlords requested that each of the tenants put their complaints in writing for the landlords. In the months that followed the landlords received notifications from the lower suite tenants concerning smoking on the property; however, the tenants did not send any complaints to the landlords. In the absence of further complaints from the tenants the landlords considered the dispute between the two sets of tenants to be largely resolved and I find that to a reasonable conclusion until further complaints were received from the tenants in May 2013. Accordingly, I find the tenants failed to establish that the landlords were aware of any ongoing disturbances or interference the tenants may have been experiencing at the hands of the lower suite tenant after June 2012 up until the next complaint that was made in mid-May 2013. If the tenants continued to be unreasonably disturbed after June 2012 I find it reasonable to expect that the tenants would continue to complain to the landlords in order to expect the landlords to escalate action against the offending tenants. However, the tenants admit that they chose to stay silent for 11 months. I find the tenants' choice to remain silent is a decision for which they must bear the loss during that period of time, if any, and points to a failure to minimize losses.

The next complaint the tenants made to the landlords was in mid-May 2013. As seen in the tenant's letter he indicates that the tenants intend to avoid communication with the lower suite tenant. The tenant did not indicate that the only way to resolve the dispute would be for the lower suite tenants to move out or be evicted. The landlords met with the lower suite tenants again and the tenants in the lower suite unit chose to end their tenancy shortly thereafter. I find this outcome resolved the disputes between the two sets of tenants and the timing to be reasonable. Perhaps it would be helpful for the tenants to appreciate that even if the landlords had moved to evict the lower suite tenants for cause after receiving the May 2013 complaint the earliest a 1 Month Notice to End Tenancy for Cause to take effect would have been June 30, 2013.

As for the landlords attendance at the property during the tenancy, I find I am unsatisfied there was a breach of the Act. Since the property had multiple rental units the yard space and exterior of the building is usually considered to be common property. Under section 29 of the Act, a landlord is required to gain consent or give notice in order to enter a rental unit; however, there is no requirement for a landlord to gain consent or give notice to enter common property. Of further consideration is that the tenants made no attempt to communicate that they would appreciate advance notice as to when the landlord would be attending the property which points to failure to mitigate losses, if any.

In light of all of the above, I find the tenants did not meet their burden to establish that the landlords were in breach of the Act, regulations or tenancy agreement or that they took reasonable action to mitigate their losses, if any. Therefore, I dismiss the tenants' claim against the landlords for compensation for loss of quiet enjoyment in the amount of $7,500.00.

As the tenants were unsuccessful in this application I make no award for recovery of the filing fee.

Conclusion

The tenants' application has been dismissed in its entirety.

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: October 17, 2016

Residential Tenancy Branch