



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation for the loss of quiet enjoyment, for the return of double the security deposit and for the recovery of the filing fee.

The tenant had also made application for the return of utilities that she believed was overpaid and for compensation for the time the landlord took to show the suite to prospective tenants. During the hearing the tenant withdrew both of these claims.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the tenant entitled to compensation for the loss of quiet enjoyment, for the return of double the security deposit and for the recovery of the filing fee?

Background and Evidence

The parties agreed to the following: The tenancy started on March 01, 2015 for a fixed term of 12 months. The monthly rent was \$850.00 due on the first of each month. The tenant was required to cover 25% of the utility bills. Prior to moving in, the tenant paid a security deposit of \$400.00. The rental unit is located in the basement of the landlord's home. The landlord lives upstairs.

The tenant stated that through the tenancy she was disturbed by stomping noises created by the grandchild of the landlord. The landlord's daughter and mother of the landlord's grandchild testified at the hearing. She stated that at the time the rental unit was being showed to prospective tenants, the landlord informed all prospective tenants that the landlords would be babysitting their grandchild during the day. The tenant denied having been informed of this.

The landlord also stated that he tenant was very interested in the rental unit due to its proximity to her place of employment.

The tenant provided copies of email correspondence between the parties regarding the noise complaints and also filed digital recordings of the noise disturbances. The emails are dated June 12, June 20 and November 25, 2015 and February 04, 2016. The recordings were made during the day and late evening and support the tenant's testimony that there was stomping and the dropping of items. The tenant agreed that she did not make an application for dispute resolution to obtain an order directing the landlord to cease the activity that created the noise disturbances.

The landlord's daughter testified that upon receipt of noise disturbance complaints, she restricted the activity of the child to areas other than the kitchen which was located over the tenant's bedroom. The landlord also stated that she installed soft closing hinges on all kitchen cabinets in an attempt to reduce noise from the upper suite.

The tenant is claiming the return of a portion of rent paid for every month of the tenancy, for the loss of quiet enjoyment. The amount claimed by the tenant is \$1,850.00.

On March 30, 2016, the date of the move out, the parties conducted an inspection of the rental unit. The tenant stated that she provided the landlord with her forwarding address in writing during the inspection. The landlord stated that he informed the tenant that the last utility bill was pending. He testified that he also notified the tenant that upon receipt of the bill, he would make a deduction off the security deposit and return the balance to the tenant. The landlord testified that the tenant gave him verbal permission to do so.

The tenant denied that this conversation took place and stated that she did not give the landlord permission to make a deduction off the security deposit. However, during the hearing the tenant agreed that she owed \$172.79 for utilities.

The landlord wrote a cheque dated April 04, 2016 for the amount of the security deposit minus the tenant's share of utilities. The landlord attached an explanation of the amount of the deduction along with copies of the utility bills. The landlord stated that he mailed the package by regular mail on April 04, 2016. The tenant agreed that she had received the cheque dated April 04, 2016 and even filed the original cheque into evidence. The tenant stated that she received the cheque on April 22, 2016. The landlord had no way of proving that the cheque was mailed within 15 days of the end of tenancy.

On April 22, 2016, the tenant made application for the return of double the deposit. The tenant stated that she did so because she had not received the cheque within 15 days of the end of tenancy and also because the landlord had made an unauthorized deduction off the security deposit. The tenant served the landlord with the notice of hearing package and the landlord sent the tenant a cheque in the amount of \$400.00 which is the full amount of the security deposit. The tenant filed the cheque into evidence. The tenant is claiming the return of double the security deposit.

Analysis

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

The tenant's testimony consisted of noise disturbances associated with the normal every day activities of a young child. At the start of tenancy, the tenant was aware that the landlord lived upstairs and therefore noise disturbances caused by movements on the upper floor were not unexpected.

Tenants renting a suite located on a lower level of a home are required to accept the fact that they will hear noises from the suite located above. I find that the noise disturbances were created by the landlord's grandchild and were mostly during the day. I further find that the tenant has not proven that the noise disturbances were deliberate on the part of the upstairs tenants.

I find that the tenant may have been disturbed by the movements of the residents upstairs, but this does not constitute a basis for a breach of the covenant of quiet enjoyment. Accordingly, I find that the tenant has not proven her case for compensation for the loss of quiet enjoyment.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. Based on the sworn testimony of the both parties, I find that the tenant provided the landlord with her forwarding address on the last day of tenancy and the tenant testified that she received the cheque, 22 days later and it included an unauthorized deduction.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim.

When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the landlord stated that he had verbal consent from the tenant to make a deduction off the security deposit. The tenant denied having given the landlord consent and in the absence of a written consent, I find that landlord has not proven that he had the consent of the tenant to make the deduction. In addition, even though the cheque is dated April 04, 2016, the landlord was unable to provide evidence to support his testimony that he had mailed the cheque within 15 days of the end of tenancy. The tenant testified that she received it on April 22, 2016 which is beyond the legislated time frame of 15 days. The landlord currently holds a security deposit of \$400.00 and is obligated under section 38 to return double this amount.

The tenant has proven a portion of her claim and therefore is entitled to the recovery of the filing fee of \$100.00. Overall the tenant has established a claim of \$900.00 which consists of \$800.00 for the return of double the security deposit plus \$100.00 for the recovery of the filing fee. The tenant agreed that she owed \$172.79 for utilities. The landlord may retain this amount from the tenant's established entitlement and return the balance of \$727.21 to the tenant. I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court

Conclusion

I grant the tenant a monetary order in the amount of **\$727.21**.

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 13, 2016

Residential Tenancy Branch

