



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$5000
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on February 23, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on May 1, 2014. The written tenancy agreement provided that the tenant(s) would pay rent of \$650 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$650 at the start of the tenancy.

The tenancy ended on June 30, 2015. The landlord returned \$350 of the security deposit on July 6, 2015.

The Application for Dispute Resolution filed by the Tenant claims he was entitled to compensation in the sum of \$5000 for constant harassment, unproven accusations, constant foul language, lies and illegal action against the tenant, humiliation and embarrassment. He seeks compensation for stress, depression and anxiety.

Briefly, the tenant testified as follows:

- The landlord claimed \$20 a day for the days he moved in early prior to the start of the tenancy
- The landlord claimed his car was leaking oil. He has taken his vehicle to a mechanic who assured him his car is not leaking oil.
- The tenancy agreement provided by the landlord is confusing
- On 3 occasions the landlord gave the tenancy 24 hours notice and then inspected the rental unit.
- Three times the landlord became hysterical and for 10 minutes she swear at him. She subsequently apologized.
- The landlord gave him a number of notes complaining of his behaviour.

Briefly, the landlord gave the following testimony:

- She denies that she harassed, humiliated or embarrassed the tenant.
- The tenant's vehicle was leaking oil and she had to take steps to repair the area once the tenant vacated.
- The tenant failed to respond to her limited requests including the moving of plants.
- She only conducted 3 inspections during the 14 month tenancy.
- On one occasion he threw in one of his item of clothes with her laundry.
- The tenant failed to properly clean the rental unit. It took her 5 washes of the bathroom floor to properly clean the bathroom after the tenant vacated..
- The tenant refused to participate in an inspection at the end of the tenancy.
- It cost her \$300 to clean the rental unit after he vacated. The landlord enclosed receipts for the cost of purchasing cleaning supplies.
- She retained this sum and returned the balance to the tenant in the form of a cheque in the sum of \$350 on July 6, 2016 and a second cheque in the sum of \$17.50 for interest on the deposit.
- The landlord relies on a large number of documents that were produced for the hearing.

Law

Policy Guideline #6 provides as follows:

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord

was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

Analysis

After carefully considering all of the evidence I determined the Tenant has failed to establish a claim for the breach of the covenant of quiet enjoyment for the following reasons:

- The tenant has failed to establish that the interactions with the landlord amounted to a substantial interference with the ordinary and lawful enjoyment of the rental unit.
- The tenant complained about 3 inspections of the rental unit. The Act permits a landlord to conduct an inspection a month provided proper notice is given. There is not basis for this complaint.
- The disputes relating to oil leaking, the use of the laundry, the movement of plants cannot be considered substantial interference.
- The tenant alleged the landlord verbally abused her a few occasions. Again, the tenant has failed to prove that these isolated incidents can amount to the breach of the covenant of quiet enjoyment as they are not sufficiently frequent or ongoing to give rise to a claim.
- On many occasions the landlord's concerns were justified.
- I do not accept the submission of the Tenant that the landlord's use of notes to express her concerns in the circumstances of this case amounts to harassment.

As a result I dismissed the tenant's application for breach of the covenant of quiet enjoyment.

However, the tenant is entitled to compensation for the actions of the landlord in dealing with the security deposit. The Act provides that the landlord is only entitled to demand a security deposit of $\frac{1}{2}$ of a month rent. In this case the landlord demanded and received a full month security deposit which is contrary to the Act.

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Policy Guideline #17 includes the following:

"5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525)."

Analysis

The tenant paid a security deposit of \$650 on prior to May 1, 2014. I determined the tenancy ended on June 30, 2015. I further determined that the tenant provided the landlord with his forwarding address in writing on June 30, 2016. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenant's forwarding address in writing.

As a result I determined the tenants have established a claim against the landlord for double the security deposit. Policy Guideline #17 provides that an arbitrator is to double the entire security deposit even though the returned \$350 within 15 days. As a result I determined the tenant is

entitled to the sum of \$950 calculated as follows: ($\$650 \times 2 = \1300 minus the \$350 returned or the sum of \$950).

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$950 plus the sum of \$50 in respect of the filing fee (reduced to reflect the tenant has been successful on one issue only) for a total of \$1000.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: October 24, 2016

Residential Tenancy Branch