



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC MNDC MND O OPC FF

Introduction

This hearing dealt with (a) an application by the tenant for an order cancelling the landlord's 1 Month Notice to End Tenancy dated July 29, 2016 and a monetary order; and (b) an application by the landlord for an order of possession and a monetary order. Both parties have requested recovery of their filing fees from each other. Both parties attended the hearing and had an opportunity to be heard.

After a portion of the hearing had been conducted, the tenant advised that his family was going to be vacating the rental unit on September 30, 2016. Accordingly, the applications of the parties relating to the landlord's Notice to End Tenancy are no longer in issue.

Issue(s) to be Decided

Are the parties entitled to the requested monetary orders?

Background and Evidence

This tenancy began on June 16, 2016. The rent is \$1300 per month. A security deposit of \$660 was paid at the start of the tenancy. The rental unit is a suite in the landlord's home. It seems that the tenancy began on an amicable basis but that over the course of the tenancy, the landlord began to be unhappy with certain behaviours of the tenants and the tenants began to feel unhappy with what they saw as loss of privacy and their right to quiet enjoyment of the rental unit.

The behaviours of the tenants that upset the landlord got to the point that on July 29, 2016, the landlord served the tenants with a 1 Month Notice to End Tenancy alleging significant interference, unreasonable disturbance and extraordinary damage to the rental unit. The tenant disputed the Notice but began looking for alternate housing because they were also unhappy with behaviours of the landlord. The tenant testified that he was surprised when they were served with the Notice because they had already told the landlord that the situation was not working for them either.

The landlord complained about yelling, arguing, excessive showering, chair moving and toilet flushing by the tenants and the tenants complained that they were being asked to alter their daily life schedules and activities to an unwarranted degree. The tenants were also very upset to find out that many of their private conversations were being overheard by the landlord through the bedroom wall of their adult daughter. The tenants felt this was a serious breach of their right to reasonable privacy.

Analysis

The parties have submitted the following monetary claims:

Landlord's Claim

The landlord has made a monetary claim comprised of the following:

Loss of rent for September 2016	\$1300.00
Loss of rent for October 2016	\$1300.00
Loss of rent for November 2016	\$1300.00
Potential loss of rent for Dec 2016	\$1300.00
Potential loss of rent for January 2017	\$1300.00
Potential loss of rent for February 2017	\$1300.00
Loss of right to quiet enjoyment by landlord for June 2016	\$500.00
Loss of right to quiet enjoyment by landlord for July 2016	\$500.00
Misrepresentation by tenant about non-smoker status to obtain tenancy	\$500.00
Reimbursement for plumbing services	\$1087.74
Filing fee	\$100.00
TOTAL	\$10,487.74

I shall deal with each of these claims in turn.

Loss of rent for September 2016 (\$1300.00) – There has been no loss of rent for September because the rent has been paid for this month. This claim is dismissed.

Loss of rent for October 2016 – February 2017 (\$6500.00) – This claim for lost rent for five months of rent into the future is premature. The landlord cannot prove this loss. Further, the tenancy agreement specified that this was a month to month tenancy rather than a fixed term. This claim is dismissed.

Loss of right to quiet enjoyment for June and July (\$1000.00) – The landlord does not have a right to quiet enjoyment. This is a right of a tenant only. See Residential Tenancy Policy Guideline No. 6. This claim is dismissed.

Misrepresentation by tenant about non-smoker status (\$500.00) – The landlord does not have a right to claim for misrepresentation under the Act. The remedies available to a landlord for something like this are in the right to serve notice for cause (as the landlord has done in this case) and a claim for damage caused (if any) to the rental unit as a result of the tenant's actions. This claim is dismissed.

Reimbursement for plumbing services (\$1087.74) – The landlord is requesting reimbursement for plumbing charges incurred on the rental unit in the course of the tenancy. There are two parts to this portion of the claim.

Shower Fixture: The first is for \$310.80 for repairing a shower mechanism. The landlord claims that “the female tenant broke the shower mechanism” and that this went beyond normal wear and tear to the unit. The landlord testified that previous tenants had not had any problems with the shower handle. The tenant disputed this claim saying that a previous tenant did have trouble with the same shower handle. The tenant testified that “the shower goes up and down and left and right” and that they “couldn't fix it”. The tenant also claims that the landlord's receipt for this repair contains items that do not relate to the shower mechanism at all.

Toilet: The second is for \$776.94 for replacing the toilet. According to the landlord the original toilet was 9 or 10 years old but was working perfectly. The landlord testified that they believe the toilet was damaged due to “excessive flushing” and by the tenants' young child putting things down the toilet. In response, the tenant claims that there is no such thing as excessive flushing and that they can flush when they need to! The tenant also claims that one of the reasons that there was a lot of flushing was because the toilet was filling up and flushing on its own. The tenants noted that once the toilet was replaced, the “excessive flushing” stopped. As well, the tenants claim that they were never told that their daughter was putting things down the toilet. In sum the tenants dispute that they should have to pay for the new toilet.

In considering both of these claims by the landlord, I find it very difficult to ascribe the damage to the tenants. If the tenants had been vandalising the rental unit in other ways I might be persuaded that the damage to the shower and toilet were part of that crusade but on balance I am not persuaded that the tenants would have purposefully or recklessly have damaged the landlord's property in these ways. Rather I find that the repair to the shower and toilet were part of the normal repairs and maintenance that all landlords must do from time to time. These claims are dismissed.

Tenants' Claim

The tenants have made a monetary claim of \$2000.00 comprised of \$1300.00 for loss of quiet enjoyment and \$800 in moving expenses. In the tenants' written submissions they state as follows:

In a very short time the landlord has caused much grief to my family...My wife and I feel that we have lost quiet enjoyment of our suite due to the unreasonable demands (that were not in the contract we signed) requested of us and caused her [sic] to feel "like a prisoner" in our own home.

Some of the requests were as follows:

- a. Asked not to flush the toilet so much or at night while people were sleeping.
- b. Asked not to use the shower at the same time as someone in the other unit.
- c. Asked not to shower at night.
- d. We were asked to accept the fact that her dog barked.

These requests, in my opinion, fall under Section 27 of the Act "free and unrestricted use of facilities"...

I did my best to follow the rules, but knew they were not in the original contract. I did my best to accommodate as we did not want to disturb our landlord, nor did I want to move again...

In addition to the items outlined in their written statement, the male tenant testified at the hearing that the landlord called child services about supposed abuse they believed was occurring in the unit toward the tenants' child and that the landlord's daughter was listening to their private conversations through the wall of her bedroom. In addition, the male tenant testified that the landlord asked them to stop washing dishes and moving chairs – both things that the tenants to be well within normal living noises. Finally, the tenant testified that the landlord was coming to the door of their unit too often and he had asked them to either text or email instead. The tenant provided samples of the emails he sent to the landlord all of which showed that his tone was calm and reasonable.

The male tenant testified that the stress of living with the increasingly intrusive demands of the landlord caused such stress for his wife that she ended up having a nervous breakdown and was taken to Jubilee Hospital.

The tenant also testified that he did not want to move but felt they had no choice and that the landlord should have to share in his moving costs.

In response, the landlord testified that they simply started to distrust the tenants and that they could no longer live with all the noise that was coming from the unit.

In any event, the tenants have requested compensation for their loss of quiet enjoyment and for their moving expenses. I have reviewed all the documentary materials and reviewed the testimony given by both parties at the hearing. The hearing also gave the opportunity to hear the manner in which each of the parties expressed themselves and behaved.

Based on all of the above, I find that the tenants are entitled to half their claim for loss of quiet enjoyment (\$650.00) and half their claim for moving expenses (\$400). I make this finding on the totality of the evidence before me.

Conclusion

The landlord's application is dismissed.

I also dismiss the landlord's request to recover her filing fee from the tenants.

The tenants have established a total monetary claim of \$1,050.00. I also find that the tenants are entitled to recover half of their filing fee in the amount of \$50.00 from the landlord for a total monetary order of \$1,100.00. I order the landlord to pay this sum to the tenants. This order may be filed and enforced in the Small Claims 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: November 8, 2016

Residential Tenancy Branch