



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, OLC, LRE, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenants served the landlord with the notice of hearing package in person on September 30, 2016. The landlord also confirmed receipt of the tenants' submitted documentary evidence. The tenants confirmed receipt of the landlord's submitted documentary evidence. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence from the other party, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

At the outset the tenants clarified that they had vacated the rental unit on October 23, 2016, which was confirmed by the landlord. The tenants withdrew portions of their application: OLC, LRE, O and are proceeding only on the MNDC and FF portions of the application. As such no further action is required for those portions of the tenants' application.

At the end of the hearing both parties indicated that a change of address was required for delivery of the written decision. As such, the Residential Tenancy Branch File shall be updated to reflect the new mailing addresses provided by each party.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for loss of quiet enjoyment?
Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 1, 2015 on a fixed term tenancy ending on September 1, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$900.00 payable on the 1st day of each month and a security deposit of \$450.00 was paid on August 16, 2015.

The tenants seek a monetary claim of \$1,800.00 for the loss of quiet enjoyment. The tenants stated that this is calculated based upon 2 months of rent for harassment over a 2 month period. The tenants stated that this was an arbitrary amount not based upon any actual losses.

The tenants outlined 5 incidents of when the landlord caused the loss of quiet enjoyment of the rental. The tenants stated that the landlord began showings of the rental unit on August 22, 2016 even though the end of tenancy was not until November 1, 2016. The tenants argued that the landlord ignored repeated requests to set certain days for showings. The tenants stated that the landlord has made numerous requests for showings with less than 24 hour notice. The tenants have submitted in support of these claims copies of numerous text messages between the two parties. The landlord disputes the tenants' claims stating that she was misled by the tenants. The landlord has submitted copies of written notice(s) to enter the rental unit for rental showings.

The tenants also claim that the landlord in making the showings has failed to monitor the viewers during the showings. The landlord disputed this claim stating that all viewers are escorted through the rental property during the showing.

The tenants stated that the landlord on one occasion cleaned the rental unit during a rental showing without their permission. The landlord disputed this claim. The tenants have provided a copy of a video in which the landlord was recorded vacuuming during showings with the tenant present. The landlord later confirmed that she did in fact clean/vacuum during a showing stating that the tenants had failed to clean up.

The tenant has provided audio recordings of the landlord aggressively demanding that the tenants sign a form.

The landlord disputes the tenants' claims stating that she tried to accommodate the tenants who insisted that showings be during the day and that the tenants be present.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, I find on a balance of probabilities that I prefer the evidence of the tenants over that of the landlord. As such, I make a finding that the landlord has breached the quiet enjoyment of the rental unit for the tenants by making multiple rental showings without proper notice to the tenants. I note for the record that it is not a requirement for the tenants to be present during a showing. The tenants have specified an arbitrary monetary claim of \$1,800.00 based upon 2 months of rent. I find that the tenants have failed to justify the amount claimed to equal the loss of use of the rental unit for 2 months. As such, the tenants have failed to provide sufficient evidence to satisfy me of their monetary claim. However, I find that as a breach of the loss of quiet enjoyment has occurred, I order that the tenants be granted a nominal award of \$100.00 for the inconvenience that has occurred.

I find that as the tenants have only been partial successful that the tenants are only entitled to recovery of part of the filing fee. I grant the tenants recovery of \$50.00 for the filing fee.

Conclusion

The tenants are granted a monetary order for \$150.00.

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: December 07, 2016

Residential Tenancy Branch