



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAT, LRE, MNDC, OLC

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 67;
2. An Order to allow the locks to be changed - Section 70;
3. An Order suspending the Landlord’s right of entry - Section 70;
4. A Monetary Order for compensation for loss - Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

I accept the Tenants’ evidence that each Landlord was served in person on December 14, 2016 with the application for dispute resolution and notice of hearing in accordance with Section 89 of the Act. The Landlords did not attend the hearing. The Tenants were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenants have moved out of the unit as of December 24, 2016. As the Tenants no longer reside in the unit I find that the claims for a cancellation of a notice to end tenancy, the claim for compliance and the claims in relation to the locks and entry by the Landlord are no longer relevant. I therefore dismiss these claims.

It was noted that the application set out a different order of names for the first named Tenant. This Tenant clarified that in error the order was set out wrong in the application. Given this minor error and considering that there is no prejudice to the Landlord I amend the application to correct the order of the first named Tenant.

Issue(s) to be Decided

Are the Tenants entitled to compensation?

Background and Evidence

The Tenants found the unit advertised online and moved into the unit on November 26, 2016. The Landlords live in the upper unit. The Landlords identified themselves as the landlords renting a separate basement unit. The basement unit has its own entrance, bathroom and kitchen and is separate from the upper unit. Rent of \$1,150.00 was payable on the first day of each month. At the outset of the tenancy the Landlords collected \$425.00 as a security deposit. No move in inspection was offered by the Landlords or conducted with the Tenants. The Tenants paid \$150.00 for rent for November and full rent for December 2016.

On December 3, 2016, a day after the Tenants requested a written tenancy agreement and receipts for the rent paid, the Landlord started to tell the Tenants to move out of the unit. The Landlords told the Tenants that the Tenants were only roommates and not tenants and that the Landlords could therefore evict the Tenants however they wished. From that date forward the Landlords commenced banging on the ceiling at all hours of the day and night and on one occasion the banging lasted until 8:00 a.m. The Landlords also entered the unit at least 4 times that the Tenants are aware of, without the Tenant's permission or any notice. On one of those occasions the Tenants were

present when the Landlord walked in. On this occasion the Tenants asked the Landlord to leave and the Landlord refused and pushed the Tenant. The Landlord finally left when the Tenants called the police. The one Landlord was using crutches and would bang on their door at least once a day with the crutches. On one of those occasions the Landlord was hitting the door so hard that it cracked. On several occasions the Landlords would call down to the unit using words like “niggers” and “fags”. The Tenants called the police on 4 occasions and finally as they could no longer tolerate the abuse the Tenants moved out of the unit and are currently without their own residence. The Tenants claim \$1,150.00 for loss of quiet enjoyment.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*].

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Based on the undisputed evidence of the Tenants that the Landlords held themselves out as Landlords, that the Landlords collected a security deposit and that the unit was separate from the Landlords' residence, I find that the Tenants have substantiated that a tenancy existed. I also find that the Tenants have substantiated that the Landlords grossly violated their rights to privacy, quiet enjoyment of the unit, and freedom from disturbance. I also find that the Tenants mitigated their losses by moving out of the unit. As I consider the monetary amount claimed to be minimal considering the extent of the Landlords' breaches I find that the Tenants are entitled to \$1,150.00. As the Tenants did not pay a filing fee this may not be recovered.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,150.00**. If necessary, this order may be filed in the Small Claims 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: January 17, 2017

Residential Tenancy Branch