



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADE APARTMENT RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation in the amount of \$7,830.00, for loss under the *Act* and tenancy agreement. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Was the landlord negligent with regard to responding to the tenant's complaints of problems with smoking by other tenants and with the security and maintenance of the building?

Background and Evidence

The tenancy started about 16 years ago. The monthly rent is \$952.00. The rental unit is an apartment located in a building complex. Both parties agreed that smoking was permitted inside the building.

The tenant stated that the occupant of the rental unit below her smokes marijuana and prepares marijuana tea for drinking. The tenant stated that the smell and smoke resulting from the marijuana use, enters her unit and causes her problems. The tenant stated that other occupants of the building smoke in excess causing her multiple problems from second hand smoke. The tenant also stated that she has additional health issues which are aggravated by the presence of smoke.

The landlord testified that since the building is a smoking building it was not possible to stop tenants from smoking or insist that they do not smoke in excess. The landlord agreed that the smoking of marijuana is not permitted. The landlord stated that the tenant who was allegedly using marijuana was questioned and he denied the allegation.

In an attempt to resolve the problem, the landlord requested the tenant to call when she smelt marijuana, so that the landlord could speak with the concerned tenant. The landlord stated that the tenant never called. The tenant stated that she called multiple times but the caretaker did not answer the call.

The tenant also stated that the building is not safe and has been vandalized and broken into several times. The landlord stated that in 2016 there was only one incident where a person walked in after a resident opened the garage door and was not vigilant. The intruder entered an unlocked car, ransacked the glove compartment, found nothing and therefore nothing was stolen.

The tenant also stated that street people are often found wandering inside the building and one was reported sleeping inside the laundry room. The landlord agreed that one person was removed from the laundry room but this incident occurred approximately ten years ago.

The tenant stated that she parks her vehicle on the street but sometimes uses the garage. She stated that during the tenancy her car was broken into 25 times when parked in the garage and never broken into when parked on the street. The tenant stated that she paid multiple insurance deductibles to repair her vehicle but was unable to provide any further information regarding the number of times she paid a deductible.

The tenant wants the landlord to change the locks in the building, the garage and the mailboxes. The landlord testified that the mailboxes have never been broken into. The tenant stated that she witnessed a mailbox break in. The landlord stated that she had no reason to change locks and considered it an unnecessary expense.

A portion of the tenant's claim for compensation involves the garbage in the back alley. The tenant filed photographs of garbage strewn outside the garbage cans. The tenant agreed that at one point there were dumpster divers causing a mess but the landlord has since then locked the garbage containers. The tenant stated that on one occasion, she noticed that one of the locks was broken and that there was a person inside the garbage container.

The landlord stated that she has a full time cleaner on site and he picks up garbage in the back alley when necessary. The landlord stated that garbage is thrown there by passersby and some residents of the building and that on one occasion a mattress was dumped by the garbage cans. The landlord stated that they do their best to keep the area clean but it is not possible to monitor and control the activities of members of the general public.

The tenant is claiming monetary compensation for a loss of quiet enjoyment due to the second hand smoke, the security of the building and the garbage strewn in the back alley. The tenant is also claiming for the cost of registered mail and the recovery of the filing fee.

Analysis

Smoking is permitted inside the building and the tenant was aware of this provision when she moved into the building. While it is unfortunate that the health of the tenant is aggravated by second hand smoke, the landlord is unable to create a no smoking policy for the existing tenants. However the landlord is in a position to enforce a no smoking of marijuana without a permit policy. I order the landlord to send out a memo to all tenants reminding them of this policy and to investigate complaints regarding its use.

Since this is a smoking building and the tenant was aware of this at the time she moved in, the tenant is not entitled to compensation for the problems she is encountering from the effects of second hand smoke.

Regarding the safety and security of the building, the parties provided contradictory testimony. The tenant stated that her car had been broken into 25 times while the landlord stated that in 2016 there was only one incident of an unauthorized person gaining entry into the garage. The tenant was unable to support her testimony with information regarding the amount she had paid in deductibles or with dates that these break-ins occurred.

The tenant also spoke of a mail box break in and of strangers sleeping inside the laundry room. The landlord stated that the mail boxes were never broken into and that there was one incident of a person sleeping in the laundry room approximately ten years ago.

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.

The tenant could not provide adequate information to support her testimony that her vehicle was broken into 25 times, that the mailboxes were broken into and that there are multiple incidents of homeless people wandering about inside the building.

The landlord denied any mailbox break-ins and stated that there was only one single incident of an unknown male sleeping in the laundry room approximately 10 years ago.

Based on the testimony of both parties, I prefer the evidence of the landlord. I find that there is insufficient information to order the landlord to change all locks in the building and garage. The tenant continues to occupy the rental unit going on seventeen years despite the alleged lack of maintenance and security. I find that the tenant is not entitled to compensation for the loss of quiet enjoyment from the alleged lack of security in the building.

Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant.

Regarding the condition of the back alley, I find that the landlord has a full time cleaner on site who is responsible for keeping the back alley clean. I further find that it is not feasible to expect a landlord to monitor and control the activities of passersby and other members of the general public. The tenant is at liberty to contact the landlord when the back alley requires cleaning.

Based on the testimony of both parties I find that the landlord is in compliance with Section 32. I also find that the tenant has not proven an entitlement to compensation for the condition of the back alley.

The tenant has also applied for the cost of registered mail. The legislation does not permit me to award any litigation related costs other than the filing fee. The tenant has not proven her claim and therefore must bear the cost of filing her application.

Conclusion

The tenant's application is dismissed in its entirety.

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 24, 2017

Residential Tenancy Branch

