



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

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

- a. A monetary order in the sum of \$3600
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

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 carries on business on January 6, 2016. The tenant testified she also mailed the Amended Application for Dispute Resolution to where the landlord carries on business on January 17, 2017. With respect to each of the applicant's claims I find as follows:

I dismissed the request of the tenant to amend her application to seek an order as to when to regain possession of the rental unit she is moving to and for an ongoing reduction. It is not appropriate and a denial of the principles of natural justice to grant such an amendment and make a ruling on it in this hearing where the tenant has not given the landlord notice of the order she is seeking.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy 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 October 1, 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$900 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$450 at the start of the tenancy.

The tenant claims against the landlord for the breach of the covenant of quiet enjoyment. She provided that she was subject to substantial interference from the upstairs tenant for the months on September, October, December and January. She testified that she has not included November as she was only disturbed on one occasion in that month.

The evidence produced by the tenant starts the following disturbances have occurred. For the most part it identifies the nature of the disturbance (usually stomping and banging), the time they occurred (often in the very late evening or early hours of the morning) but does not state how long they lasted.:

- 5 occasions in September including September 4, 5, 6, 8 and 9.. She was not in the rental uniform September 19 to October 4.
- 7 disturbances in October 2016
- 1 disturbance in November, 2016.
- 15 disturbances in December 2016.
- 3 disturbances in January although the tenant testified it has continued in January and has reached over 15 disturbances.

The tenant produced a copy of an e-mail to the landlord dated October 25, 2016 and December 20, requesting the landlord deal with this problem.

The tenant testified the landlord has failed to do anything about these disturbances. However, there is an exchange of e-mails and it appears the parties have agreed that the tenant can move to a different unit in February.

The tenant referred to a decision from another arbitrator dated September 26, 2016 where the other arbitrator ordered a 15% reduction in the value of the tenancy for the period April 1, 2016 to August 31, 2016. The landlord did not appear at that hearing.

Law

Protection of tenant's right to quiet enjoyment

28 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*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

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

The landlord failed to appear at the hearing. Thus it is impossible to assess what if anything the landlord did to resolve this problem. In the absence of evidence from the landlord I must assume nothing was done apart from what is set out in the evidence of the tenant.

It appears the disturbance to the tenant appears to be different depending on the month. With respect to each of the tenant's claims I determined as follows:

- The tenant was disturbed on 5 occasions in September. I determined the tenant is entitled to \$50 for this month.
- The tenant provided evidence as to 7 disturbances in October. I determined the Tenant is entitled to \$100 for October.
- The Tenant did not file a claim for November as she was disturbed only once.
- The tenant provided evidence as to 15 disturbances in December. Those disturbances were longer and more intense. I determined the tenant is entitled to \$150 for the reduced value of the tenancy.
- The tenant testified she has been disturbed more than 15 times for January. I determined she is entitled to \$150 for January 2017.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$450 plus the sum of \$100 in respect of the filing fee for a total of \$550.

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.

Conclusion:

In conclusion I ordered the landlord to pay to the tenant the sum of \$ plus \$ for the cost of the filing fee for a total of \$.

This decision is final and binding on the parties.

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 27, 2017

Residential Tenancy Branch