



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC OLC RP PSF LRE FF O

Introduction

This hearing convened pursuant to the tenant's application to cancel a notice to end tenancy for cause, as well as for monetary compensation, recovery of the filing fee and other orders. The tenant called in to the teleconference hearing but the landlord did not.

The tenant submitted evidence to establish that the landlord was served with the application for dispute resolution and notice of hearing by registered mail sent on January 15, 2017. Section 90 of the Act states that a document is deemed to have been served five days after mailing. I found that the landlord was deemed served with notice of the hearing on January 20, 2017, and I proceeded with the hearing in the absence of the landlord.

Preliminary Issue(s)

At the beginning of the hearing the tenant stated that he vacated the rental unit on January 31, 2017. I therefore dismissed the portions of the tenant's application regarding cancellation of a notice to end tenancy and several other orders that would only be applicable if the tenancy were to continue. I only addressed the tenant's claim for monetary compensation and recovery of the filing fee.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on April 1, 2016, with monthly rent of \$1,300.00. The rental unit was a basement suite in the landlord's house. The tenancy ended on January 31, 2017.

The tenant stated that there were several ongoing problems with the rental unit.

The tenant stated that there was constant noise caused by the landlord's two-year-old son, and the tenant asked the landlord several times to deal with it, but nothing was done. The tenant stated that he suffered loss of quiet enjoyment, including distress and anxiety, from the horrific, constant noise.

The tenant stated that there was inadequate heat in the unit because only the landlord had access to the heat, and they would frequently leave the heat low or turn it off. The tenant stated that he told the landlord several times to install baseboard heaters, but the landlord only gave him two oil-based heaters that were only good for heating an area of 100 square feet. The tenant stated that on December 24, 2016 he had no heat for 24 hours, and on December 26, 2016 he had no heat until 7:00 pm.

The tenant stated that there was no door installed to separate the rental unit from the upstairs, and the landlord came right into the suite without notice or permission. The tenant stated that whenever he complained to the landlord, the landlord would reply, "if you don't like it, move." The tenant stated that he could not use the back yard because the landlord would not cut the grass and "it was horrible out there." The tenant stated that the landlord also failed to remove ice on the stairs that led to the rental unit entrance.

The tenant has claimed compensation of \$550.00 per month for 10 months, as well as \$2,000.00 for his moving expenses.

Analysis

I accept the tenant's undisputed evidence that he suffered a loss of quiet enjoyment of his rental unit, particularly due to the constant noise and inadequate heat. The landlord also failed to comply with the Act regarding how and when they could enter the rental unit. I therefore find that the tenant is entitled to some compensation.

However, I find that compensation of \$550.00 per month is not reasonable in the circumstances. Generally tenants are responsible for cutting the grass and clearing snow in areas that are for their exclusive use. The tenant could have applied for orders

for the landlord to provide adequate heat and quiet enjoyment earlier in his tenancy, but did not do so until he was served with a notice to end tenancy. The tenant therefore did not take all reasonable steps to mitigate his losses. I therefore find that it is appropriate to award the tenant a nominal award of \$1,000.00 for loss of quiet enjoyment and inadequate heat.

I find that as the tenant chose to move out rather than pursue cancellation of the notice to end tenancy, he is not entitled to moving costs.

As the tenant's application was partially successful, I find that he is entitled to recovery of his filing fee of \$100.00.

Conclusion

The tenant's monetary claim is partially successful.

I grant the tenant an order under section 67 for the balance due of \$1,100.00. 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: February 7, 2017

Residential Tenancy Branch