



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, RR

Introduction

This hearing was convened in response to an application filed by the tenant on January 13, 2017 seeking Orders under the *Residential Tenancy Act* (the Act) as follows:

- A Monetary Order for compensation for loss under the Act, regulation or tenancy agreement – Section 67
- An abatement of rent for repairs, services or facilities agreed upon but not provided – Section 65

Both parties participated in the hearing and provided testimony. The landlord testified they were not served with the tenant's application, however received half of the tenant's evidence: solely the digital evidence. The tenant acknowledged they did not serve the landlord with their application in accordance with the Act and was unable to confirm if they sent the landlord all of their evidence. None the less, the landlord accepted my explanation and description of the tenant's application particulars and the tenant's monetary claim for compensation. The landlord was given opportunity to continue with the hearing as a means of avoiding further or future proceedings in respect to this tenancy, which the landlord accepted. Therefore, the hearing proceeded on merits of the tenant's claims.

Both parties were provided opportunity to settle their dispute to no avail. They were also provided opportunity to present all relevant evidence and testimony in respect to their claims and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The parties were informed that only *relevant evidence* would be considered toward a final and binding Decision.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Is the tenant entitled to an abatement of rent?

The burden of proving loss rests on the claimant tenant.

Background and Evidence

This tenancy started November 01, 2016 and since ended in January 2017 (3 months). The parties agree there was a written tenancy agreement of which I do not have benefit. Rent of \$1550.00 per month was payable on the first of each month. It is undisputed the rent was inclusive of a garage structure.

The tenant claims \$2925.00 for what they explained is a combination of rent abatement or reduction in the value of the tenancy and one half month's rent for 1). loss of use of a leaky garage, 2). unfinished drywall in the entrance of the unit, 3). a noisy refrigerator, and 4). the presence of a dog above their rental unit compromising their quiet enjoyment of the unit. The landlord disputed all of the tenant's claims.

1). The tenant claims that into the rainy season of the tenancy the garage manifested an ingress of water from the front of the garage door seal area and that the garage ceiling leaked due to a compromised cover/roof. The tenant testified their expectation for the garage was it would be dry and amenable to usage other than for only parking their vehicle. However as a result of the water ingress the tenant used the garage intermittently when not raining. The tenant testified and provided photo images of leaking garage. The tenant claims that when it rained coloured and likely rusty water would leak on their car. The landlord did not dispute the garage allowed water inside it or that the roof of the garage leaked onto a parked vehicle. The tenant claims the leaky garage devalued the tenancy. The landlord disagreed stating that a vehicle for the current tenancy is routinely parked in the garage without complaint from the tenants.

2). The tenant presented a photo image of the entrance of the rental unit depicting the drywall as partially unfinished / unpainted. The tenant testified they did not raise it as an issue at the outset of the tenancy for the landlord to repair it and accepted the state of repair of the unit. The landlord did not dispute the tenant's testimony.

3). The tenant claims that during the tenancy they endured a noisy refrigerator which intermittently made a groaning sound. The tenant provided a short video depicting the refrigerator emitting an inordinate audible sound when left idle. The landlord testified

they were not aware of such an issue or why it would occur. The tenant acknowledged they did not notify the landlord of the issue during the tenancy.

4). The parties agreed that the landlord effectively recruited the tenant upon reading their 'wanted' advertisement on Craigslist seeking a tenancy. The advertisement was provided into evidence. It stated, in relevant part, *that if a basement suite no dogs above the suite*, for the sake of noise. The tenant claims that before moving into the rental unit the landlord assured the tenant there was no dog residing above the intended suite. However the tenant soon discovered the upstairs rental unit owned a dog whose activities transferred to some noise below. The tenant testified the landlord knowingly rented them the unit under this false pretense, which in part compromised the tenancy relationship and lead to the tenant vacating. The landlord did not dispute the presence of a dog upstairs and claimed the tenant told them they did not object to pets above their unit as they themselves had a pet.

Analysis

On preponderance of the evidence and on the balance of probabilities, I find as follows.

I find that one cannot weigh or account for the tenant's expectations of a garage free of any water ingress, from above, or at ground. This complaint is the tenant's biggest out of all their issues brought forth in their application. I find it reasonable for the tenant to assume a covered area for their vehicle should not entail water leaking onto their vehicle when raining, as it defeats its purpose of cover. I find it less reasonable for the tenant to expect a garage at grade should not entail any water seepage. I accept the tenant suffered a loss use of the garage space as a result of water ingress. I find the tenant is entitled to compensation for loss of use and devaluation of the tenancy, which I set at \$50.00 per month during the tenancy or the sum of **\$150.00**, without leave to reapply.

I find that the tenant did not identify the unfinished drywall in the rental unit entrance as a concern or issue at the outset of the tenancy and effectively accepted the unfinished drywall as is. Section 32 of the Act states a landlord must maintain residential property in a state of decoration and *repair required by law and suitable for occupation*. I find the unfinished drywall at the entrance of the rental unit does not breach the Act. As a result I dismiss this portion of the tenant's claim, without leave to reapply.

I find that the tenant did not notify the landlord of a noisy refrigerator during the tenancy. A landlord is not expected to address a problem if they are not alerted to it. As a result I dismiss this portion of the tenant's claim, without leave to reapply.

I find the evidence supports that the landlord, on balance of probabilities, would have known the tenant sought a tenancy free of a dog above their unit when they entered into a tenancy agreement with the tenant. I accept the testimony of the tenant, and that of the landlord, that a dog occupied the rental unit above them. I find the tenant did not present sufficient evidence to support in which ways the presence of a dog above them intruded on their quiet enjoyment; however I accept that in all likelihood the presence of a dog above their unit caused sufficient noise or commotion to routinely alert the tenant to its presence. As a result, I find the tenant entitled to nominal compensation for a loss of quiet enjoyment which I set at \$100.00 for each month of the 3 month tenancy, in the resulting total of **\$300.00**, without leave to reapply. The tenant's award is the sum of all fractional entitlements in the total of **\$450.00**.

Having determined the tenant's entitlement to compensation I find that an abatement of rent is not required.

I grant the tenant a monetary Order under Section 67 of the Act for the amount of **\$450.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application in relevant part is granted.

This Decision and Order is final and binding on both 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: February 22, 2017

Residential Tenancy Branch

