



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: MNDC, MNSD, FF

Landlord's application: MND, MNDC, MNSD, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The tenant applied for a monetary award for the return of his security deposit including double the amount and for compensation for loss of quiet enjoyment. The landlord applied for a monetary award and an order to retain a portion of the tenant's security deposit. The parties exchanged documentary evidence before the hearing. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for loss of quiet enjoyment?
Is the tenant entitled to the return of his security deposit including double the amount?
Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

The rental unit is a strata title apartment in Vancouver. The tenancy began on August 1, 2009. The monthly rent was \$1,300.00 and the tenant paid a security deposit of \$650.00 at the start of the tenancy.

The tenancy ended and the tenant moved out of the rental unit on October 31, 2016. The landlord claimed that the tenant failed to return the remote control used to access the parking garage and returned two fobs used to enter the building and access the elevator. The landlord said the fobs were not functional and they were not the fobs issued to the tenant at the beginning of the tenancy. The strata manager activated one

of the fobs; the other one could not be programmed and had to be replaced at a cost of \$50.00. The garage door opener had to be replaced at a cost of \$100.00.

The landlord said that the tenant hung a large number of pictures and artworks in the rental unit. He said there more than 220 holes in the walls of various sizes, many of them quite substantial. The landlord said the quantity and size of the holes exceeded a reasonable number that could be considered as normal wear and tear. He said the carpet in the rental unit was unsuccessfully cleaned; there were stains and it smelled bad. The landlord claimed \$150.00 for work to patch holes and to perform additional carpet cleaning. He claimed a total of \$300.00.

The tenant testified that he was forced to move out of the rental unit because of the noise and disturbance caused by the occupant of an apartment above the tenant's unit. The tenant complained of loud banging and foot stomping, the sounds of furniture being moved and dropped in the late evening on a repeated basis, night after night. The tenant testified that he raised the matter with the landlord who referred him to the strata manager. The tenant provided copies of his communications and e-mail exchanges with the landlord and with the strata managers. The tenant said that he had to perform his own investigations and obtain a title search to determine the source of the disturbance. The communications submitted by the tenant consisted primarily of e-mails exchanged from October 2015 to December, 2015. The tenant included documents relating to a parking issue and a dispute in September, 2016 relating to non-payment of rent; these matters did not pertain to the tenant's complaints about loss of quiet enjoyment.

At the hearing the landlord acknowledged that there was an issue with an upstairs occupant in the rental property that affected the tenant's quiet enjoyment of the rental unit for a period of time. The landlord said that he reported the tenant's concerns to the strata and to the strata manager. He said that he had limited means to deal directly with the problem because he is merely the owner of a strata unit in the building and unable to do more than petition the strata manager to take action with respect to his tenant's complaints.

On September 8, 2016 the tenant submitted his application seeking compensation for loss of quiet enjoyment; he claimed an award in the amount of \$800.00 said to be compensation for moving and relocation because of the landlord's failure to stop the noise from above his unit. The tenant moved out of the rental unit on October 31, 2016. He did not provide the landlord with his forwarding address in writing. The tenant submitted an amendment to his application on November 16, 2016. In the Amendment

to his application for dispute resolution he added a claim for the return of his security deposit including an award of double the amount of the deposit.

The tenant testified that he did return the garage door opener to the landlord and said there was no problem with the fobs he returned; he said that the strata manager was new in her job and she did not know how to reprogram the fobs he provided.

The landlord testified that the tenant did not tell him where he had moved and did not give the landlord his forwarding address in writing when the tenancy ended on October 31st. The landlord learned that the tenant moved into another strata unit across the hall from the rental unit when he received a copy of the amended application. The landlord filed his application for dispute resolution to claim a portion of the deposit on November 18, 2016.

The landlord testified that the tenant has been hostile towards the landlord since the tenancy ended. The tenant brought an application to dispute a Notice to End Tenancy for unpaid rent and it was dismissed because the tenant had moved out. The landlord said that he had to call the police when the tenant threatened him because he objected to the landlord performing renovations to the rental unit after the tenancy ended. The landlord testified that the tenant has worked as a property manager and he believes that the tenant returned some random door fobs in his possession rather than the ones that were given to him when the tenancy started. He said the fobs that were returned did not match the serial numbers of the ones that were assigned to the tenant. The landlord said that the garage door remote was not returned and it would be made inoperable to prevent its misuse.

Analysis

The landlord submitted documents and photos with respect to the claim for compensation for patching, carpet cleaning and replacement of a fob and remote. I accept the landlord's testimony that the tenant did not return the garage remote or the assigned fobs. The landlord's testimony is corroborated by the e-mails exchanged with the strata managers responsible for the remote systems. They confirmed that the returned fobs did not exist in the strata's database system and had to be re-programmed. The landlord was advised by the strata manager that one of the fobs could not be re-reprogrammed and had to be replaced. I accept the landlord's evidence in preference to the tenant's unsupported statement that the strata manager did not know how to reprogram the fob. I find that the landlord is entitled to an award in the amount of \$225.00 for the following:

- Cost to replace garage door remote: \$100.00
- Cost to replace fob: \$50.00
- Filling excessive holes: \$75.00

Total: \$225.00

I was informed at the hearing that the carpet was replaced with other flooring as part of the renovation so I disallow the claim for carpet cleaning. The landlord is entitled to recover the \$100.00 filing fee for his application for a total award of \$325.00.

Turning to the tenant's application, he has claimed the sum of \$800.00 as compensation for loss of quiet enjoyment, but he calculated the claim based on what he said were his anticipated costs for moving and relocation. The tenant did not submit documents with respect to any moving expenses that he may have incurred. The Residential Tenancy Policy Guideline with respect to entitlement to quiet enjoyment provides in part that:

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.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

The tenant did not provide evidence that he incurred any moving expenses and in any event that is not the measure by which damages for loss of quiet enjoyment should be calculated. The tenant claimed to have been disturbed for a significant period by late night noise, stomping and furniture moving by an upstairs occupant. The landlord's ability to investigate or directly intercede was hampered because he is the owner of the tenant's unit, but not of the other units in this strata title apartment building.

The tenant has not provided any detailed records of the disturbances to support his claim for compensation; there are no daily logs or other information, but I do have the tenant's testimony that the disturbance was protracted and fueled his decision to move. The landlord agreed at the hearing that the disturbance did occur and he tried to persuade the strata manager to act on the complaints from the tenant. Although the landlord did try to address the tenant's complaints his efforts were ineffectual because some of the possible remedies were outside of his control. I find that the tenant did suffer a significant impairment of his quiet enjoyment of the rental unit over a period of months. The disturbance was not continuous and faced with the lack of detail from the tenant I find that a modest award to acknowledge the loss of quiet enjoyment is appropriate. I fix the award to the tenant for loss of quiet enjoyment at the sum of \$400.00. The tenant is entitled to recover the \$100.00 filing fee for his application, for a total award of \$500.00.

The tenant claimed for the return of his security deposit including double the amount of the deposit. Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The tenant did not provide the landlord with is forwarding address in writing. The landlord filed his application for dispute resolution to make a claim against the deposit on November 18, 2016, immediately after he learned of the tenant's forwarding address. I find that there is no basis for the tenant's claim to an award of double the amount of the security deposit.

The landlord has been awarded the sum of \$325.00. The tenant has been awarded the sum of \$500.00. After setting off the award in favour of the landlord against the award to the tenant, there is a net amount of \$175.00 due to the tenant. The tenant is also entitled to the return of his security deposit, but not to an award of double the amount. The amount of the security deposit is \$650.00. The tenant is entitled to a monetary order in the amount of \$825.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The claims of the landlord and the tenant have been allowed in part. The tenant has been granted a monetary order in the amount of \$825.00.

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: March 10, 2017

Residential Tenancy Branch