



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RM HOTEL VENTURES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

On March 30, 2017, the Tenant applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), regulation, or tenancy agreement.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

There was no documentary evidence from the Landlord before me during the hearing. The Residential Tenancy Branch (the “RTB”) received 7 pages of evidence from the Landlord on May 4, 2017. After the conclusion of the hearing, I received the Landlord’s evidence. Since the Landlord’s evidence was not submitted in accordance with timelines set out in the RTB Rules of Procedure, and there is no way to confirm whether or not it was disclosed to the Tenant, I will not consider it in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

The rental property is a multi-unit building. The Landlord and Tenant testified that the tenancy began in July 2016, as a month to month tenancy. Rent in the amount of \$500.00 is due on the first day of each month. The Tenant testified that a security deposit of \$250.00 was paid to the Landlord.

The Tenant is seeking the amount of \$2,000.00 due to a loss of quiet enjoyment of the rental property due to an incident of assault that occurred on December 17, 2016.

The Tenant testified that in December 2016, he was assaulted by another Tenant. He testified that the Tenant attempted to kick down his door. He testified that he was forced to abandon his unit for a time. He testified that he was not able to live normally in his unit for 1 month.

The Tenant testified that the Landlord told him the rental property was a good place to live; however, it has turned into a ghetto.

The Tenant testified that the Landlord did nothing to deal with the Tenant's safety and security.

The Tenant testified that he sent the Landlord a letter on January 13, 2017, regarding the assault. He testified that he informed the Landlord that he does not feel safe in his room and that the Landlord has not taken action against the Tenant that assaulted him.

The Tenant testified that the Landlord responded to his concerns by stating that necessary steps were taken to ensure safety.

In response, the Landlord testified that a letter dated January 12, 2017, was received from the Tenant and the Landlord responded the next day. The Landlord informed the Tenant to contact the police regarding the assault, as the Landlord has done everything in their control. The Landlord testified that they gave the other Tenant an eviction from the rental unit. The Landlord later clarified that they moved the other Tenant to a different building away from the Tenant.

The Landlord testified that they inspected the Tenant's door and found it to be structurally sound with an operating deadbolt. The Landlord testified that the cosmetic damage was repaired.

The Landlord testified that he received an email from the Tenant on January 14, 2017, stating the Tenant was satisfied with the repair of the door.

In response, the Tenant testified that he did contact the police, and that the other Tenant involved in the assault was not removed from his unit until the end of January.

The Tenant testified that there have been no further assaults on him since the incident in December.

The Tenant testified that the email he sent to the Landlord dated January 2014, was written under duress, because it was the same night that the Tenant who assaulted him overdosed.

Analysis

Section 7 of the Act states that if a Landlord or Tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results. A Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Directive #6 Entitlement to Quiet Enjoyment is intended help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

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

Section 28 of the Act states 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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept that the Tenant was assaulted and suffered a loss of enjoyment of the rental property; however, I do not find that the Landlord is responsible to compensate the Tenant.

I find that the Landlord did not directly cause, or contribute to the assault on the Tenant. Once the Landlord was aware of the incident, the Landlord appropriately informed the Tenant to report the incident to the Police.

I accept the Landlord's testimony that the Tenant's door was found to be structurally sound and I find that the Landlord repaired the cosmetic damage within in a reasonable period of time. I do not accept the Tenant's testimony that his email to the Landlord that he was satisfied with the door repair was written under duress. Nevertheless the repair of the door carries little weight in my consideration of the claim for loss of quiet enjoyment.

I find that the Landlord took reasonable steps to reduce further risk to the Tenant by moving the other Tenant out of the building.

There have been no further assaults on the Tenant since the incident in December 2016.

Accordingly, I dismiss the Tenant's claim to be compensated for a loss of quiet enjoyment of the rental property.

Conclusion

The Tenant's application for compensation due to loss of quiet enjoyment of the rental unit is dismissed without leave to reapply.

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: May 12, 2017

Residential Tenancy Branch