



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Orca Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OLC, MNSD, MNDC, FF

Introduction

This is an application brought by the tenant requesting a monetary order in the amount of \$7250.00, and requesting recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

The parties were affirmed

Issue(s) to be Decided

The issue is whether or not the applicant has established a monetary claim against the respondent, and if so in what amount.

Background and Evidence

The parties agree that this tenancy began on September 1, 2013 and ended on August 31, 2016.

The parties also agree that the tenant paid a security deposit of \$1450.00, a pet deposit of \$1450.00, and a key deposit of \$250.00 for a total of \$3150.00.

The parties also agree that at the end of the tenancy landlord withheld \$75.00 of the security deposit. The pet deposit and the key deposit were both returned in full.

The tenant testified that when they renewed their lease on May 27, 2015, they agreed to pay an extra \$100.00 per month, on the condition that a clause was put in the lease stating that the property would not be put on the sales market within the term of the lease.

The tenant further testified that in December of 2015 the realtor came to their door and he informed them that the property had been listed for sale.

The tenant further testified that, after contacting the landlord she was eventually told that the property was removed from the MLS, however she was never told that the property had been taken off the market.

The tenant further testified that, while the property was listed on MLS they were frequently disturbed by people walking past the exterior taking photos of the unit and even had someone peering through the windows and taking photos. This caused significant stress to our family as well as the neighbors.

The tenant therefore requests that the extra \$100.00 per month, that she agreed to, be returned for the full 12 month period for a total of \$1200.00.

The tenant further testified that they had a problem with the tenants above them making considerable noise late at night and she does not believe that the property managers took reasonable steps to try and alleviate the problem.

The tenant further testified that the unit above them is not owned by the landlords, it is owned by someone else, however she requested that the property manager intervene and attempt to

resolve the issue of the noise coming from above, however as far as she knows nothing was ever done.

The tenant testified that she sent many e-mails to the property manager and got little or no response, and eventually the property manager stopped responding to e-mails at all.

As a result they had to suffer a loss of use and enjoyment due to the constant noise from the upper unit, and therefore she is asking for a rent reduction of \$290.00 per month for 20 months, for a total of \$5800.00.

The tenant further testified that at the end of the tenancy the landlord deducted \$75.00 from their security deposit without getting a permission to do so, and without applying for dispute resolution, and therefore she is requesting further return of that \$75.00, double, as the landlord failed to follow the Residential Tenancy Act.

In response to the tenant's testimony, the landlord testified that the rental unit is owned by two owners, and one of the owners was not aware of the clause stating that the rental unit was not to be listed for sale, and it was that owner that listed the unit for sale.

The landlord further testified that once he was informed of the clause in the tenancy agreement, the rental unit was taken off the real estate market, and there had been no viewings or even requests of viewings of the rental property, and therefore he fails to see how the tenant suffered any loss whatsoever.

The landlord testified that this is not a concrete building, it is a wood frame building and as a result the noise transfer from one unit to another is to be expected.

The landlord further testified that there are two units above this unit, and one of those units' hallways goes right above this unit's bedrooms, therefore causing noise transfer directly to the bedrooms from the hallway.

The landlord further testified that after speaking with the applicant he did attempt to resolve the issue, both through the Strata Corporation, and through the owner of the unit above the tenants.

The landlord further testified that this was more of a he said/she said situation as the tenants who lived above these tenants had many complaints as well, about the applicant, and in fact the owner of the unit above told him that he had lost previous tenants due to confrontations with the applicant.

The landlord further testified that, after speaking with the applicant's husband, they had agreed that it would probably be best to end the lease, however instead, the applicants chose to extend the lease on more than one occasion. If it was such a problem why would they continue to extend the lease?

The landlord testified that he did deduct \$75.00 from the security deposit; however that was done after he got verbal permission from the applicant's husband to make that the deduction. He did not get any written permission however, and did not apply for dispute resolution.

In response to the landlord's testimony the tenant testified that she has seen no evidence that the property manager ever spoke to the strata or the owner, and she did not cause another tenant to move out of the rental unit, that tenant told her that the unit did not work out for them.

The tenant further testified that no verbal permission was ever given to the landlord to keep \$75.00 of the security deposit.

Analysis

It is my decision that I will not allow the tenants claim for \$1200.00 for a breach of the lease condition that required that the unit not be listed for sale.

The parties agree that there was a clause in the tenancy agreement that stated that the rental unit was not to be listed for sale, and the parties also agree the rental unit was subsequently listed for sale, however I accept the landlords explanation that it was listed inadvertently by one of the owners who was not aware of the clause, and that it was removed from the sales market as soon as possible, and before any showings were ever done.

The tenant claims that this was very stressful on them, however I find this to be little more than an inconvenience, and I find no substantial loss of use.

I also deny the tenants claim for loss of use and enjoyment that resulted from noise transfer from the rental unit above them. The landlords do not own the rental unit above them and therefore had little control over the actions of the tenants in that rental unit.

Further, as stated by the landlord, this is a wood frame building and therefore sound transfer is much higher than it would be in a concrete structure.

Further, although the tenant does not believe the landlords took reasonable steps to try and mitigate the problem, I accept the landlord's testimony that he attempted with both the Strata Corporation and the owner of the unit to try and come to some resolution however, as stated above, if the owner of the unit above is unwilling to cooperate, there is very little that the landlord can do to resolve this issue.

As far as the security deposit is concerned, section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants full security deposit or applied for dispute resolution to keep any or all of tenant's security deposit, and the time limit in which to apply is now past.

This tenancy ended on August 31, 2016, and the landlord had a forwarding address in writing by August 31, 2016, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid a security deposit of \$1450.00, and therefore the landlord must pay \$2900.00 to the tenant less the \$75.00 that was already returned. Therefore pursuant to sections 38 and 67

of the Residential Tenancy Act, it is my decision that the landlords must pay \$2825.00 to the tenant.

Having allowed a substantial amount of the tenant's claim, I also order, pursuant to section 72 of the Residential Tenancy Act, that the landlords bear the \$100.00 cost of the filing fee.

Pursuant to section 62 of the Residential Tenancy Act, the remainder of the tenant's monetary claims are dismissed without leave to reapply.

Conclusion

I have issued a monetary order for the respondent to pay \$2925.00 to the applicant.

As stated above the remaining claims have been 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: June 05, 2017

Residential Tenancy Branch