



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing was convened in response to an application and amended application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the Landlord to comply - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenants’ evidence that the Landlord was served with the application for dispute resolution and notice of hearing and the amended application (the “Materials”) by registered mail in accordance with Section 89 of the Act. The Tenants provided receipts for the registered mail containing the tracking numbers for the mail. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Materials. The Tenants were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy of an upper unit started on October 1, 2016. The Landlord resides in the lower unit. Rent of \$1,700.00 is payable monthly. At the outset of the tenancy the Landlord collected \$850.00 as a security deposit and \$425.00 as a pet deposit.

The Landlord has harassed and disturbed the Tenants on numerous occasions since nearly the onset of the tenancy by using profanities towards the Tenants, making loud noises both during the day and over nights until early in the morning, making inappropriate statements towards the female Tenant and one of her female friends, carrying out a visual display of a sexual act from the lower unit and by demanding payment of utilities earlier than provided for under the tenancy agreement. The Tenants have lost sleep, have experienced illness and missed work and had to stay at a hotel for one night as a result of the Landlord's behavior. The Tenants provided a detailed chronology of events, a copy of the hotel invoice and medical notes. The Tenants provided a cd with audio recordings. The Tenants claim \$250.00 for each disturbing act by the Landlord, \$480.00 for loss of work and \$151.16 as the cost of a hotel room. The Tenants did not provide any supporting evidence of lost income such as pay stubs showing a deduction for missed work.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to:

- reasonable privacy; and
- freedom from unreasonable disturbance;

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Based on the undisputed evidence of the Landlord's acts and considering the audio recordings I find that the Tenants have substantiated that the Landlord acted to prevent the Tenants from having quiet enjoyment of their unit. Given the lack of supporting evidence to show lost employment income I find that the Tenants

have not substantiated this loss. Otherwise I find that the Tenants are entitled to the undisputed costs claimed of **\$4,900.00** for 21 acts by the Landlord and **\$151.16** for the costs of the hotel room. As the Tenants' application has met with substantial success I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,151.16**. The Tenants may deduct this amount from future rent payable in full satisfaction of the entitlement.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$5,151.16**. If necessary, 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: July 17, 2017

Residential Tenancy Branch