Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF (Landlord's Application)
MNDC (Tenant's Application)

Introduction

These hearings were convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord on December 16, 2016 and by the Tenant on January 4, 2017. Both files were scheduled to be heard together by the Residential Tenancy Branch.

The Landlord applied for a Monetary Order to keep the Tenant's security deposit and to recover the filing fee from the Tenant. The Tenant applied for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement. The Tenant amended her Application on May 31, 2017 to increase the monetary claim by $200.00.

The Landlord appeared for the June 14, 2017 hearing with an assistant and also provided a witness. The Tenant appeared with a legal advocate. All testimony was taken under affirmation.

At the June 14, 2017 hearing, the Tenant confirmed receipt of the Landlord's Application but the Tenant's legal advocate submitted that the Landlord had submitted late evidence to them on June 8, 2017. The Landlord confirmed that the four pages of documentary evidence she had served prior to this hearing was late. When the Landlord was asked why this evidence had been submitted so late, especially when the Application had been filed in December 2016, the Landlord could offer no explanation.

Accordingly, as the Landlord failed to serve evidence within the time limits stipulated by the Residential Tenancy Branch Rules of Procedure, and the Tenant objected to the use of it in the hearing, I did not consider this evidence in the hearing and will not consider it in making my findings in this dispute. However, the Landlord was not prohibited from giving that evidence into oral testimony.

The June 14, 2017 hearing was adjourned to reconvene on July 24, 2017 due to time restrictions. The full reasoning for the adjournment was detailed in my Interim Decision dated June 14, 2017 which was sent to both parties.

The same parties appeared for the reconvened hearing. In addition, the Landlord had her legal counsel who made submissions and arguments during the hearing. All testimony was again provided under affirmation. At the reconvened hearing, the Landlord's legal counsel confirmed receipt of the Tenant's amended Application.

The hearing process was explained and no questions were asked as to how the proceedings would be conducted. While I have considered the allowed evidence provided by the parties in this case, I have only documented the evidence which was relevant to me making findings in this dispute.

Issue(s) to be Decided

- Has the Landlord provided sufficient evidence that the Tenant damaged the Landlord's washing machine?
- Has the Landlord extinguished her right to keep the Tenant's security deposit?
- Is the Tenant entitled to monetary compensation for issues that occurred during and after the tenancy had ended?

Background and Evidence

The parties have a family relationship. The Landlord, the Tenant, and the property manager are sisters. The parties confirmed that in August 2014, the Landlord had an oral tenancy agreement with the Tenant to rent out the lower portion of this duplex residential home. Rent under the agreement was $650.00 payable on the first day of each month. The Tenant paid the Landlord a $325.00 security deposit on or before July 2014 which the Landlord still retains. The parties also confirmed that in August 2015, the oral tenancy agreement was documented through a signed tenancy agreement.

The Landlord was unable to confirm whether a Condition Inspection Report (the "CIR") was completed at the start of the tenancy but stated that the property manager, who was a witness in this hearing, would know. The Landlord called the property manager as a witness. The property manager testified that she could not remember whether she completed one at the start of the tenancy but the move-out CIR was not completed because an altercation between the parties occurred at the end of the tenancy and the police had to be called.

The Tenant testified that no move-in or move-out CIR was completed for this tenancy and neither was she provided with any copy of a CIR.

The Tenant's legal advocate explained that the tenancy ended when the Tenant was served with a two month notice to end tenancy for the Landlord's use of the property. The two month notice was disputed by the Tenant. In a hearing that took place on November 18, 2016, the file number for which appears on the front page of this Decision, the Landlord was able to prove the two month notice and obtained an Order of Possession to end the tenancy for November 30, 2016. This was the date the Tenant vacated the rental unit.

The legal advocate testified that he sent the Landlord an email prior to the tenancy ending providing the Landlord with the Tenant's forwarding address. However, that email evidence was not before me. The Tenant testified that she did give the Landlord her forwarding address again in the form of a letter on December 6, 2016 which was put through the Landlord's mail slot. A copy of that letter was provided into evidence.

The Landlord was unable to confirm or deny that she had received the Tenant's forwarding address by email, but did confirm receipt of the December 7, 2016 letter on December 8, 2016.

The Landlord stated that she wants to keep the Tenant's security deposit because the Tenant damaged and broke a washing machine as outlined on her Application. The Landlord testified that the Tenant was provided access to a laundry room to be shared with the occupants of the upstairs rental suite of the home. This shared laundry room housed two sets of washing machines and dryers; one set was provided by the Landlord for the upstairs tenants and the other set belonged to the Tenant.

The Landlord testified that on or around March 8, 2016, the Tenant put a large dog bed in the washing machine provided to the upstairs tenants by the Landlord instead of using her own washing machine. The Landlord explained that this dog bed was for a 200 lb dog and was too large to be put into a washing machine of that capacity. The Landlord stated that because of this, the motor on the washing machine burnt out and destroyed the washing machine. The Landlord testified that the washing machine would not work and it was plugged with dog hair.

The property manager testified that a few days after this incident, the Tenant owned up to putting the dog bed in the washing machine causing it to break. The property manager explained that the Tenant was unable to afford to replace the washing machine or repair it.

The Landlord testified that she called out a company to take a look at the washing machine to see if it could be repaired which cost $87.35; however, the Landlord only claims $25.00 for this portion of the claim. The Landlord claims $300.00 for a used washing machine to replace the one destroyed by the Tenant, for a total claim of $325.00, which the Landlord now seeks to recover from the Tenant's security deposit.

The Tenant stated that the upstairs tenants had used her washer and dryer for one year during the tenancy. However, the Tenant did admit to putting the dog bed into the upstairs tenants' washing machine but stated that she could not afford to repair it.

The legal advocate asked the Landlord how old the washing machine was, but the Landlord was unable to confirm the age of it. The legal advocate also asked about the company who had undertaken the initial service call. The Landlord clarified that the name of the company who attended to look at the washing machine was incorrect on the Application and confirmed the correct name in oral evidence during the hearing.

The Tenant was then asked to present her monetary claim as laid out in the Monetary Order Worksheet. The Tenant explained that she was claiming $100.00 in loss of peaceful and quiet enjoyment of the tenancy and aggravated damages during the entire 30 months of the tenancy totaling $3,000.00.

The Tenant explained that after a month of her moving into the rental unit, two young renters moved into the upstairs rental suite. The Tenant testified that during this time, the upstairs renters partied, drank alcohol, and played floor hockey. The Tenant testified that they constantly harassed her by bouncing a ball in their unit and constantly knocked on her door asking for cigarettes.

The Tenant testified that she asked the property manager to deal with these disturbances and they were called by the property manager and asked to stop. However, after the disturbances continued, the property manager informed the Tenant that she would just have to put up with the noise or move out. This was the reason why the Tenant asked the Landlord to remove the property manager as she was not getting proper relief from the noise. The Tenant testified that this disturbance continued from approximately September 2014 to the spring of 2015.

The Tenant testified that after the above renters had moved out, the Landlord started to then undertake major renovations and repairs which caused noise disturbance over a period of three weeks. The Tenant stated that when she complained to the property manager she was informed that there was nothing that could be done.

The Tenant testified that after the renovations were complete, the Landlord put the rental property up for sale, and one day she came home to find that a realtor was inside her home showing her rental unit without her permission. When the Tenant confronted the realtor, the realtor informed her that she had been given keys to the rental unit by the property manager. The Tenant testified that she did lodge a complaint with the realtor's association about the realtor's conduct and was verbally informed in response that the realtor would not be doing this again and that this was a one-off event. The Tenant confirmed that she did not get a formal response back from the realtor's association.

The Tenant testified that in October 2015, three new tenants moved into the rental suite upstairs and during their time occupying the upstairs suite the tenants would have regular drug and alcohol fueled parties which often deteriorated into verbal arguments and shouting matches causing the Tenant significant stress and disturbance. The Tenant explained that when she informed the property manager about this, the property manager did not want to know anything and just advised the Tenant to call police for them to deal with it when this was occurring after 11:00 p.m.

The Tenant then referenced six police reports in her evidence where she had called police to deal with the noise disturbances which had occurred on a monthly basis. The Tenant testified that in addition there were many other incidents outside of the police attending which caused disturbance, for which she did not call the police.

The police reports show that on each occasion the police attended the upstairs suite, they found intoxicated individuals causing loud noise and disturbance. On one occasion in May 2016, one of the individuals was arrested for breach of the peace to be released after becoming sober. On another occasion in March 2016, one of the individuals was transported away from the scene due to the disturbance taking place.

The Tenant then referred to four handwritten letters from friends that had witnessed these disturbances first hand and the lack of action taken by the property manager in dealing with the disturbances properly.

The Tenant explained that in retaliation to the Tenant's continual verbal complaints about the above issues, the property manager and Landlord pursued a course of action attempting to evict her from the rental unit using notices to end tenancy. The Tenant's legal advocate pointed at two 1 month notices to end tenancy for cause, and one 2 month notice to end tenancy for the Landlord's use of the property, all three of which had been successfully cancelled by the Tenant in dispute resolution hearings filed by the Tenant.

However, when the Tenant was served with the second two month notice to end tenancy for the Landlord's use of the property, the Tenant was not successful in cancelling that notice and the Landlord was issued with an Order of Possession to end the tenancy for the end of November 2016. The Tenant now submits that these notices to end her tenancy caused her significant distress and loss of enjoyment of the property as she had to fight them because they had no merit.

The Landlord's legal counsel was allowed to cross examine the Tenant, who started off by asking the Tenant about the authors of the witness letters the Tenant was relying on. Legal counsel submitted that the Tenant had asked her friends to write the letters, which the Tenant denied, and questioned the dates they were authored. The Tenant's legal advocate confirmed that the letters were prepared at some point in February 2016 for the purposes of fighting the evictions notices that had been served to the Tenant.

The Landlord's legal counsel submitted that while the Tenant had provided police evidence of disturbances caused by the second set of upstairs tenants, the Tenant had failed to provide any evidence that the first set of upstairs renters had caused disturbance. Legal counsel stated that the Tenant had claimed compensation for all months of this tenancy yet the Tenant readily admitted that for the first month of the tenancy there were no disturbances because the upstairs renters did not move in until a month after the Tenant did. Legal counsel submitted that this was inconsistent.

Legal counsel submitted that the Tenant is making out that these disturbances occurred on a daily basis, but the evidence only shows the disturbances were sporadic and does not give rise to $100.00 of monetary compensation for every month of this tenancy.

The Landlord confirmed that the Tenant had informed the property manager about the noise complaints from the first set of upstairs renters but that the property manager took action by speaking to them and the noise was curtailed. The Landlord testified that after that, she received no more complaints either verbally or in writing.

The Landlord testified that they did undertake renovations to the upstairs suite but this was limited to painting and installation of vinyl flooring, which caused little noise and the work was limited to the working hours of the weekdays only. The Landlord testified that at no point did the Tenant inform them that this was causing a disturbance or that she be moved elsewhere temporarily; had the Tenant done so, then the Landlord would have been willing to move the Tenant out to another place until the work was done.

In relation to the Tenant's evidence regarding the disturbances by the second set of upstairs tenants, the Landlord stated that the Tenant had blocked the property

manager's phone number from her phone so that when the Tenant reported the noise to the property manager, the property manager was unable to phone the Tenant back to get further information; instead the property manager had to drive out to the rental unit and put a note on the upstairs renters' door. The Landlord testified even though the Tenant started to cease her communication with the property manager, at no time did the Landlord receive a written complaint from the Tenant about continuing disturbance she was experiencing and certainly not to the extent that had been laid out in all the Tenant's evidence.

The Landlord's legal counsel argued that if the Tenant's complaints were valid and warranted then how was she able to endure such a lengthy tenancy without making written complaints to the Landlord or dealing with the matters through dispute resolution. The Landlord's legal counsel submitted that the Tenant's actions were contrary in that she had fought multiple eviction notices, which the Landlord was entitled to serve, showing that the Tenant had a continuing desire to stay at the rental unit.

The Tenant also claimed for losses from the Landlord as a result of this tenancy ending, namely: $300.00 for three months of costs for a storage unit to house the Tenant's personal property because she had nowhere to store it at the end of the tenancy; $410.00 in moving costs; and $325.00 of employment losses because she had to move. The Tenant was asked in the hearing why she claimed these losses when the tenancy was ended under a notice to end tenancy through dispute resolution. However, the Tenant offered no explanation. The Landlord's legal counsel stated that the tenancy had been ended by proper means and therefore, the Tenant was not entitled to these costs.

The Tenant also claims $500.00 for a shed which she asserted the Landlord is preventing her from removing. The Tenant stated that at the start of the tenancy, she moved a wooden shed for which she incurred transportation costs of $200.00 which accounted for the increased monetary claim on the Tenant's amended Application. The Tenant confirmed that the Landlord had not forced her to move it there. The Tenant stated that after she had vacated the rental unit, she went back to the rental property on December 6, 2016 to retrieve it. The Tenant testified that it was at this point that an altercation occurred between her and the Landlord's husband during which the Tenant stated that her vehicle was damaged by him with a baseball bat.

The Tenant explained that the police were called and after they investigated the matter, no charges for the vandalism to the car were laid by the police. However, the Tenant now seeks to claim $508.56 for the insurance deductible and repair costs to her vehicle from the Landlord. The Tenant also claims $500.00 which is the value of the shed that the Landlord is refusing to give back.

The Landlord testified that the Tenant was given plenty of time before the tenancy was ordered to be ended for November 30, 2016. Legal counsel for Landlord asserted that the Tenant was supposed to have had the shed removed also by that date and that she had no right to enter the property thereafter.

The Landlord testified that they were happy for the Tenant to come back and retrieve the shed but the Tenant returned with bolt cutters to enter the premises illegally to recover the shed and that is why an altercation ensued. The Landlord denied that her husband was the aggressor or the person that caused damage to the Tenant's car.

Legal counsel stated that the Tenant had abandoned the shed after the tenancy had ended. The Tenant confirmed that she had not given anything to the Landlord in writing to indicate that she wanted the property back because she does not have the means or place to store it.

Analysis

In this dispute, the Landlord seeks to claim the Tenant's security deposit in lieu of damages to the rental unit. Therefore, I first turn my mind to the Landlord's claim for damages caused by the Tenant to the washing machine.

I accept the Landlord's testimony and the property manager's oral evidence on the balance of probabilities that the Tenant's actions of putting a large dog bed led to the damage of the washing machine. The Tenant did not deny her actions caused the washing machine to malfunction or offer any other explanation as to why it was damaged. While the Landlord did not provide any evidence as to the age of the washing machine, I accept that $300.00 is a reasonable replacement cost, especially as the Landlord had purchased a used one to mitigate and keep the cost down. I also grant the Landlord the $25.00 claimed for the inspection report that was undertaken to asses any repair which then determined the requirement for replacement.

As the Landlord has been successful in proving all the damage caused by the Tenant, pursuant to Section 72(1) of the Act, the Landlord is also awarded the $100.00 filing fee. Therefore, I grant the Landlord's claim in full of $425.00.

I next turn my mind to the Landlord's request to obtain the above relief from the Tenant's security deposit. I accept the undisputed evidence that the Landlord received the Tenant's forwarding address in a letter on December 8, 2016 after the tenancy had ended on June 30, 2016. Therefore, I find the Landlord filed her Application to keep the Tenant's security deposit within the 15 day time limit set by Section 38(1) of the Act.

However, Sections 23 and 35 of the Act states that a tenant and landlord together must inspect the condition of the rental unit at the start and end of a tenancy. These provisions of the Act continue to state that the landlord must complete the CIR in accordance with the regulations by providing the tenant opportunity to take part in it, and that the CIR must be signed.

Sections 24(2) and 36(2) state that the right of the landlord to claim against the security deposit for damage to the rental unit is **extinguished** if the landlord fails to comply with the reporting requirements as laid out in Section 23 and 35 of the Act.

In this case, I find there is insufficient evidence before me that the Landlord met the reporting requirements of the Act. The Landlord was unable to confirm whether a move-in CIR was completed, and in the face of such a report being denied as in existence by the Tenant, the Landlord provided no evidence of this. Therefore, I am only able to conclude that the Landlord failed to meet the reporting requirements of the Act.

As a result, I must find that the Landlord's right to claim the awarded damages against the Tenant's security deposit was extinguished when these breaches occurred and the Landlord had no right to retain it because this right had been extinguished.

Policy Guideline 17 to the Act consists of a section titled "Return or Retention of Security Deposit through Arbitration." Point number 3 of this section states that an Arbitrator will order the return of double the deposit if the landlord has made a claim and the right to make a claim has been extinguished under the Act.

Therefore, I have no discretion and find that the Landlord must pay the Tenant double the security deposit in the amount of $650.00. Accordingly, I dismiss the Landlord's Application to keep the Tenant's security deposit and award the Tenant $650.00. No interest is payable on this amount as the tenancy started in 2014.

I now turn my mind to the Tenant's monetary claims as laid out in the Tenant's Monetary Order Worksheet. With respect to the Tenant's claims for storage, moving, and loss of employment costs due to the ending of the tenancy, I find the Tenant has no entitlement to these amounts. In the November 18, 2016 hearing between the same parties, the Tenant exercised her right to dispute the notice to end tenancy. The Tenant was not successful in cancelling that notice and the Landlord obtained an Order of Possession to end the tenancy for November 30, 2016. This remedy was obtained by the Landlord through due process and legal remedy under the Act. Therefore, this does not entitle the Tenant to go on to make claims for costs incurred simply on the basis the tenancy had ended. Accordingly, I hereby dismiss these claims.

In relation to the Tenant's monetary claim for insurance and "vandalism" costs, I find that this incident occurred after the tenancy had ended and the Tenant had vacated the rental unit. I find that this was a criminal matter that was investigated by the police responding to the incident. Therefore, I dismiss this portion of the claim as I find it does not come under the jurisdiction of the Act.

With respect to the Tenant's claim for the shed, I make the following findings. I am confused as to why the Tenant would want to make the Landlord responsible to pay $200.00 for moving the shed to the rental unit at the start of the tenancy. The Tenant did this voluntarily and there was no requirement by the Landlord to have the shed at the rental property. Neither was the Tenant required to bring it there by any force or means. Therefore, the Tenant's amended claim for $200.00 is dismissed.

Section 44(1) (d) of the Act provides that a tenancy may end if a tenant vacates or abandons a rental unit. Sections 24(1) and (2) of the Residential Tenancy Regulation (the "Regulation") provides for the circumstances which allow a landlord to determine if the rental suite has been abandoned as follows:

> ***24*** *(1) A landlord may consider that a tenant has abandoned personal property if*
> *(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or*
> *(b) subject to subsection (2), the tenant leaves the personal property on residential property*
> *(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or*
> *(ii) from which the tenant has removed substantially all of his or her personal property.*
> *(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment* ***only*** *if*
> *(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or*
> *(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.*
>
> [Reproduced as written]

In this case, I find that when the Tenant fully vacated the rental unit on November 30, 2016 she had no right to enter the rental premises without authorisation to recover the shed thereafter. The Tenant would have been obligated to arrange for a date and time to retrieve the shed either in agreement with the Landlord or through dispute resolution. There is insufficient evidence before me that the Tenant pursued this course of action or

that she gave clear indication that she had an intention to have the shed returned to her after the December 6, 2016 incident. Even to this date, the Tenant has not contacted the Landlord to retrieve the shed which the Landlord confirmed is still at the rental unit and was deemed as abandoned. Therefore, I dismiss this portion of the Tenant's claim.

With respect to the Tenant's monetary claim for loss of peaceful and quiet enjoyment of the rental unit I make the following findings. Section 28 of the Act states a tenant is entitled to freedom from unreasonable disturbance.

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.

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under Sections 7 and 67 of the Act. 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.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the Arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement; loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlord. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim must fail.

As a result, I first turn my mind to the issue of the notices to end tenancy. I find that a landlord is not barred from issuing multiple notices to end a tenancy. In this case, I find the Landlord served three notices to end tenancy in accordance with her entitlement and remedies under the Act, before successfully proving the fourth notice that led to the ending of the tenancy. I do not find that three notices to end tenancy constitutes disturbance or is sufficient evidence of harassment as suggested by the Tenant. Each time the Tenant was issued with a notice to end the tenancy, the Tenant successfully exercised her right to dispute them without interference from the Landlord. In addition, the Landlord was successful in ending the tenancy with the fourth notice. Had the Landlord issued the Tenant with multiple notices to end the tenancy for the same reason already determined in previous hearings, then I would be inclined to consider the Tenant may have had a basis for a claim. However, in this case, I find the Tenant has failed to satisfy me that the three notices to end tenancy served to her in this tenancy breached her right to quiet enjoyment of the tenancy.

In relation to the alleged disturbance caused by the renovations undertaken by the Landlord in the upstairs rental suite, I find the Tenant has provided insufficient evidence that the noise and disturbance that emanated from this work was so significant in its intensity and duration that it would warrant compensation. In this case, audio or video footage would have served as good corroborating evidence. There is also insufficient evidence before me that the Tenant had put the Landlord on proper notice of the alleged noise that would have promoted the Landlord to take the necessary steps to deal with the problem. In the absence of such evidence, I am only able to conclude that this allegation results in one party’s word against the other’s and the Tenant has not met the burden to prove this claim.

With respect to the disturbance caused by the first renters, again I find the Tenant failed to provide sufficient evidence of the disturbances. I find it concerning when the Tenant

makes such serious allegations of disturbance yet the only evidence she relies on is her oral testimony. In such a serious case, it would be reasonable to expect that the Tenant would have gathered better evidence and filed written complaints to the Landlord for further action or pursued the complaints through dispute resolution which the Tenant did not do.

With respect to the Tenant's evidence regarding her claim for disturbance that took place with the second set of upstairs tenants I make the following findings. Pursuant to the last component of the compensation test as laid out above, Section 7(2) of the Act requires a party claiming compensation to take reasonable steps to mitigate the loss being claimed.

In this case, I find the Tenant failed to take reasonable steps to mitigate loss. I concur with legal counsel for the Landlord in that the Tenant presented evidence of disturbance caused by the upstairs tenants spanning a period of several months, but took little action to resolve the matter. I agree that if the intensity of the disturbances was so severe, I would have expected to have seen some type of written complaint, or an application initiated by the Tenant for the Landlord to comply with the Act through dispute resolution. Certainly, the Tenant knew about the dispute resolution process as she had used it to successfully cancel notices to end tenancy. I find that for me, the fact that the Tenant did not pursue this course of action places doubt on the frequency and severity of the alleged disturbances as presented by the Tenant.

However, I cannot ignore the Tenant's evidence with regards to the disturbances taking place during the months that the upstairs tenants were in occupation of the rental suite. I find the Tenant provided convincing and supporting evidence that there were indeed disturbances emanating from the upstairs tenants. I find that the police reports provided by the Tenant are compelling in nature and prove that the Tenant did suffer disturbance that is consistent with the contents of the reports. I find that on at least two occasions the police had to take action to remove parties that were causing disturbance and that this action was taken as a result of the Tenant calling the police. In conjunction with the Tenant's witness evidence, I find that on the balance of probabilities, the Tenant did suffer loss of enjoyment during these events. But the Tenant's evidence failed to demonstrate and convince me that the disturbances were a daily occurrence. Rather, the evidence suggests that the disturbances were more reflective of a monthly occurrence, and certainly are not sufficient to constitute aggravated damages.

Furthermore, I must balance this loss with the fact that the Tenant, through her own actions, Iimited her communication with the property manager during these months. A landlord is able to assign an agent to act on their behalf pursuant to the definition of a

landlord provided for by the Act. Therefore, the Tenant had no right to limit her communication with the property manager and I find that this made it more difficult for the property manager to respond to the disturbance issues. However, this does not absolve the Landlord or the property manager's requirement to deal with the problem which I find lacked sufficient action and was left for the police to deal with.

Based on the foregoing analysis, I take into account the fact that the Tenant did endure disturbances from the upstairs tenants but that the Tenant has only proved that these occurred on a monthly basis. I balance this with the Tenant's lack of written and limited phone communication with the property manager and the Landlord in putting them on proper notice of the continued disturbance, and the Tenant's lack of mitigation in taking action through dispute resolution. Had the Tenant taken action against the Landlord through dispute resolution, then I am convinced that the disturbances could have been curtailed earlier and the monetary relief being sought by the Tenant would have been limited to a few months as opposed to several months.

In addition, I find the Tenant only disclosed one incident where a realtor had entered into the rental unit contrary to the Act. However, the Tenant failed to disclose what impact this had to her or on the tenancy, and there was certainly no evidence that illegal entry into the rental unit continued thereafter and would amount to harassment.

Based on the foregoing analysis, the Tenant failed to prove that for the entire duration of the tenancy, she suffered loss of quiet enjoyment and that the issuing of notices to end tenancy and renovation disturbances was sufficient to warrant compensation. Therefore, I am unable to apportion a quantitative value on the small amount of loss the Tenant has proved.

In determining the amount to be awarded to the Tenant, I turn to Policy Guideline 16 on compensation. This allows an Arbitrator to award compensation in situations where establishing the value of the damage or loss is not as straightforward. "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Therefore, I award the Tenant nominal damages of $200.00 which takes into account the monthly disturbances the Tenant has proved above including the illegal entry into the rental unit. I have limited the claim amount to $200.00 based on the Tenant's actions and failure to mitigate loss as described above. Therefore, the total amount awarded to the Tenant is $850.00 ($650.00 + $200.00).

The Act allows me to set off amounts that I find are payable to the parties. The Tenant is awarded $850.00 and the Landlord is awarded $425.00. Therefore, the difference is $425.00 which I order the Landlord to pay to the Tenant forthwith.

Conclusion

The Tenant damaged the washing machine in this tenancy. Therefore, the Landlord is awarded $425.00 for this damage and recovery of the filing fee.

The Landlord failed to meet the reporting requirements of the Act. Therefore, the Landlord's Application to keep the Tenant's security deposit is dismissed and the Tenant is awarded double the amount, totaling $650.00.

The Tenant has been awarded a nominal amount of $200.00 for breach of her quiet enjoyment during this tenancy. The remainder of the Tenant's monetary claim is dismissed without leave to re-apply.

The Tenant is issued with a Monetary Order for the remaining balance of $425.00. This order is final and binding on the parties and may be enforced by the Tenant in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 26, 2017

Residential Tenancy Branch