



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened in response to an application made March 10, 2017 for dispute resolution by the Tenant with a claim for compensation pursuant to section 67 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters

On July 22, 2017 the Tenant made an application to amend the original application. The Tenant clarifies that the original application seeking compensation of \$1,500.00 was made while the tenancy was still ongoing and was for claims in relation to the start date of the tenancy (\$300.00) and in relation to a loss of quiet enjoyment and privacy (\$1,200.00). The Tenant clarifies that the amendment seeks costs and damages related to the ending of the tenancy and the Tenant’s move out of the unit. The Landlord states that no monetary order worksheet was provided with the amended application. The Landlord objects to the amended application on the basis that there is no rationale provided for the increased amount claimed. The Landlord states that he did have time to otherwise review the evidence that was included with the amended application.

Section 59 of the Act provides that an application must contain full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Rule 2.3 of the Residential Tenancy Branch rules of Procedure provides that all claims in an application must be related. As the amended application does not provide any monetary detail of the additional amount being claimed and as the claim for damages in relation to the end of a tenancy is not related to a claim for damages in relation to an ongoing tenancy as contained in the original application, I find that the Tenant may not amend application as done and I restrict the Tenant's claim to the original claimed amount of \$1,500.00 for damages that occurred during the tenancy. The Tenant's claim in relation to the end of the tenancy is dismissed.

Issue(s) to be Decided

Is the Tenant entitled to compensation?

Background and Evidence

The Tenant states that the unit was advertised for an occupancy date of June 1, 2016. The Tenant submits that on May 19, 2016 the Landlord was informed that the Tenant wanted the unit. The Tenant submits that on May 23, 2017 the Landlord informed the Tenant the unit should be ready by July 1, 2016. The Tenant states that on June 28, 2016 the Landlord informed the Tenant that the unit would not be ready until July 15, 2016. The Tenant states that the Tenant agreed to this date but did not sign any tenancy agreement until August 28, 2016. The Tenant states that this is bad business practice and that the Tenant incurred storage costs while waiting for the unit. The Tenant claims \$300.00 for the increased storage costs.

The tenancy started on September 1, 2016 for a fixed term to end July 31, 2017. Rent of \$950.00 was payable on the first day of each month. The Parties mutually agreed to end the tenancy on March 31, 2017 and the security deposit has since been dealt with.

The Tenant states that at the outset of the tenancy the Landlord, who lives in the upper unit, informed the Tenant that there was an infant in the upper unit and that the Tenant could expect some noise. The Tenant states that some muffled noise was to be expected in a basement unit but that the Tenant soon discovered that all living noises and personal noises down to the sound of coughing and urination could be heard from the upper unit. The Tenant states that the same level of noise also came from an adjoining basement unit that was initially being worked on and then being rented as short term accommodation on a website. The Tenant states that sexual noise came from the adjoining unit and as a result the Tenant could not have her adolescent relatives visit at the unit.

The Tenant states that the Landlord was probably informed of the noise from the upper unit at the early onset of the tenancy and of the noise from the adjoining unit in December 2016 or January 2017. The Tenant states that the Landlord was also informed by text on February 28, 2017 that the noise was a problem. The Tenant states that it was suggested that the Landlord obtain area rugs for the noisiest areas but that the Landlord did nothing. The Tenant states that the Landlord had no noise insulation. The Tenant states that the noise became so unbearable that the Tenant had to move out of the unit. The Tenant states that she spoke with Landlord SL about the problem and that this Landlord understood the issue and agreed to end the fixed term tenancy.

The Landlord states that the Tenant never complained about any noise until February 2017. The Landlord states that they were not going to cover their hardwood floors with carpet and that the Tenant was told this. The Landlord states that nothing was done to reduce the noise that the Tenant complained about.

The Tenant states that the Landlord originally informed the Tenant that she would have her own mailbox with the unit and provided her with a mailing address that was not the Landlord's mailing address. The Tenant states that this did not turn out to be the case as the mail was only delivered to the Landlord's main mail box. The Tenant states that

the Landlord breached the Tenants right to privacy by delivering her mail to her box and that the Tenant incurred costs to have her mail address changed to the Landlord's mailing address. The Tenant states that there was no mail loss or tampering of mail.

The Landlord states that once they discovered that the Tenants mail was not being delivered to the different address the Landlord delivered the mail to the Tenant when it came into the Landlord's mail box. The landlord states that this mailbox was secured by a key and that the Tenant neither was given a copy of that key nor did the Tenant ask for a copy of the key. The Landlord states that the Tenant only told them that she would take the issue up with the post office and obtain delivery directly. AS a result the Landlord states that nothing further was done by the Landlord.

The Tenant states that the Landlord has motion detector security lights around the residence and that they were constantly going off at night causing a disturbance to the Tenant. The Tenant states that she cannot recall when the Landlord was informed of the problem but that it was resolved sometime in late December or early January 2017. The Landlord states that the Tenant only informed the Landlord on October 20, 2016 of the problem with the lights through multiple texts on that date and that the Landlord turned off the offending lights the next day.

Analysis

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. As there was no tenancy agreement until it was signed for the September 1, 2016 and as nothing in the Act governs when a tenancy must start, I find that the Tenant has not substantiated that the landlord breached anything that could give rise to compensation. I therefore dismiss the claim in relation to the occupancy date.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to reasonable privacy and freedom from unreasonable disturbance. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. As there is no evidence that the Tenant's mail was tampered with, lost or not delivered, I find that the Tenant has not substantiated that the Landlord breached the Tenant's right to privacy by delivering the Tenant's mail and I dismiss the claim for compensation in relation to the mail delivery.

Given the Tenant's persuasive oral evidence of noise that was coming from both the adjoining unit and the upper unit I find that the Tenant has substantiated that the Tenant's right to quiet enjoyment was breached. Given the Landlord's evidence that nothing was done to remedy or reduce the noise I find that the Tenant has substantiated that the Landlord was negligent thereby allowing the breach to occur. As the Tenant provided no supporting evidence of when the noise issue was first raised by the Tenant and as the Tenant's evidence of when it was first reported was vague I can only accept the Landlord's evidence of only being informed of this problem at the end of February 2017. As the Landlord agreed to end the fixed term tenancy and as the Tenant moved out of the unit a month later I find that the Tenant acted to mitigate its losses. I also find that the Landlord gave up its rights to the rental term past the end of March 2017. As a result I find that Tenant has only substantiated a nominal loss for March 2017 in the amount of **\$100.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. 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: August 04, 2017

Residential Tenancy Branch