



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, O, FF

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation in the amount of \$85,000.00 from the Landlord, return of the security deposit, other unspecified relief and to recover the filing fee.

The hearing was conducted by teleconference on December 19, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Tenant failed to note his spouse, J.B., on the Application for Dispute Resolution. Pursuant to section 64(3)(c) of the *Residential Tenancy Act*, I amend Tenant's to include J.B.'s name.

The Tenants also sought \$50,000.00 for "moral damages". The Tenants were informed that the jurisdiction of the *Residential Tenancy Act* is \$35,000.00. The Tenants confirmed they wished to abandon any amount over \$35,000.00. I therefore amend their application to reduce the amount claimed.

A further preliminary matter deals with late delivery of evidence. The Tenants submitted 28 pages of evidence on December 14, 2017. This was provided outside the time limits imposed by the *Residential Tenancy Branch Rules of Procedure*. The Landlord was offered an

opportunity for an adjournment to consider this evidence and declined; stating that he felt the information was not relevant to the issues before me.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord for breach of quiet enjoyment?
2. Are the Tenants entitled to return of their security deposit?
3. Should the Tenants recover the filing fee?

Background and Evidence

The Tenant, S.T., testified that this 1 year fixed term tenancy began May 1, 2015; the tenancy was set to end on April 30, 2016 following which the tenancy was to continue on a month to month basis. Monthly rent was payable in the amount of \$3,750.00 and the Tenants also paid a security deposit in the amount of \$1,875.00.

The Tenant testified that the tenancy ended May 15, 2016.

The Tenant, S.T. confirmed that the Landlord returned \$1,425.00 the security deposit at the beginning of June 2016. S.T. stated that they did not agree to the "\$400.00 deduction", although their representative did cash the cheque.

In the application before me, the Tenants sought compensation representing return of 8.5 months of rent for breach of their right to quiet enjoyment.

In support of this claim, S.T. testified as follows. He stated that in March 15, 2015 his spouse moved to the rental unit following which the Tenant then moved to the rental with the parties' children. S.T. stated that at the end of August 2015 the Landlord moved into the basement suite after which time the situation became intolerable. The Tenant stated that the Landlord complained 16 times about noise between September 23 and May 13, 2016.

S.T. stated that the Landlord "made their life miserable" by aggressively complaining about the noise once he moved into the basement suite. He stated that his complaining created a lot of stress in their home as it felt as though they had a place to stay, but not a place to "live" because of the constant harassment by the Landlord.

He further stated that they asked the Landlord to pay the cost of their move and they would move.

The Tenant stated that the soundproofing between the rental units was a problem and that the Landlord should not have rented the property to a family of four if he was concerned about noise

The Tenant stated that their children go to bed at 8:00 p.m. and they are a quiet family. He said their entire family was very stressed about the Landlord complaining and as a result the children did not move around very much and spent more time watching television than he would have liked. He further claimed that his wife's anxiety was exacerbated.

The Tenant further stated that at one point in time they engaged the services of a relocation specialist as they could no longer deal with the Landlord.

The Tenant submitted evidence from their second Landlord confirming they are quiet people and described this as a "180 degree difference" as he claimed they get along well with their Landlord and do not have any problems.

He stated that the first time the Landlord complained was during one of their children's birthday parties which occurred at noon. The Tenant stated that Landlord came down to the rental unit and complained. When I asked the Tenant to provide further details, the Tenant stated that it was the "Landlord's tone of voice" which they found upsetting. He reiterated that it was the number of complaint; namely, 16 times, which he found to be an unreasonable disturbance, thereby breaching their right to quiet enjoyment.

The Tenant further stated that the Landlord deducted \$450.00 from their security deposit without the Tenants' consent.

The Tenant, J.B., testified as well. J.B. stated that they found the Landlord to be very aggressive. She stated that he yelled at the Tenants and yelled at their children to the extent that the children were crying. She stated that she was so afraid of the Landlord that when she saw his car her heart would start racing because she was so anxious about him. She stated that she didn't feel safe while she was there with her children. She further stated that she had her children go and apologize to the Landlord to try to accommodate. She further stated that even during the hearing, and talking about the situation has caused her to shake.

J.B. stated that the Landlord would yell at them when he complained. She stated that he would be very agitated and most of the time she was home alone with the children and he would come and yell at her and the children.

She stated that it was difficult to quantify in a dollar amount the impact on their lives while they lived there. She stated that they felt like they did not have any rights, they just had a roof.

J.B. further stated that they did question themselves if they were doing something wrong. She confirmed that the next place they lived in they shared a portion of the basement floor with a basement suite such that they were more exposed to noise; she stated that they did not have similar problems in this rental.

In response to the Tenants' submissions the Landlord testified as follows.

He stated that he was very surprised by the Tenants' Application as he believed their relationship was amicable. He further stated that he did not know what the Tenants were talking about in terms of "16 times" as he recalled only three occasions when he went upstairs to speak to them about the noise. He claimed that at all times he was calm and understanding when he spoke to the Tenants, he did not raise his voice or yell, or in any way frighten the Tenants or their children.

The Landlord also said that he acknowledged that the Tenant, J.B. was upset during the hearing, not because of anything he did, but based on his experience with her and her self disclosed anxiety. For instance, he stated that on the first occasion he spoke to them about the noise was when he was downstairs and he could hear really loud banging on the floors etc. He claimed that he came upstairs and was very calm when he spoke to them. He also said that he would never yell at someone else's children "in a million years". He stated that when he told the Tenant, J.B., that it was really loud, she immediately started to cry. He said he could not understand what was going on as he felt like he needed to console her.

The Landlord also stated that the Tenant, J.B., brought the children downstairs to apologize to him and he felt this was very awkward as he felt sorry for the children as this was entirely not necessary or appropriate.

The Landlord stated that once he opened the door of his unit and was nearly hit with a hockey puck. He said that he spoke to the tenants' children but he did not yell at them at all.

The Landlord stated that the third time he came upstairs to speak to the Tenants, the male Tenant was present. He stated that the Tenant's response was "you knew we had kids".

The Landlord adamantly denied yelling at the Tenants. He stated that he understands his role as a Landlord, having been a Landlord for many years, and that he never yells at his tenants and would never do so

The Landlord stated that he had no idea they were that unhappy until he received a letter seven months later (December 15, 2016) from the Tenant S.T. wherein the Tenant stated that they were suing him for \$82,000.00.

The Landlord further confirmed that at no time was he informed the Tenants were upset with him. He testified that in fact, after the tenancy ended, their relocation specialist, with whom they dealt to find accommodation, not as some sort of intermediary between him and the Tenants, D.G., asked him if his unit was still available because she had others who were interested. He submitted that if he was such a terrible Landlord, it wouldn't make sense the D.G. would ask if his rental was available. (A copy of this email was provided in evidence.) He further stated that when he told her that the Tenants were suing him for \$85,000.00 she was completely shocked.

The Landlord further stated that the Tenants' representative, D.G. agreed to the Landlord retaining \$400.00 of their security deposit; which was confirmed in an email from D.G. to the Landlord.

In reply the Tenant J.B. stated that she did not agree to the deductions, despite the email from their representative.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenants have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

Protection of tenant's right to quiet enjoyment

28 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.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

“...

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

...

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

...

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

...

After careful consideration of the evidence, and the testimony of the parties, I find the Tenants have failed to prove the Landlord breached section 28. While I accept the Landlord may have talked to the Tenants about the noise from the rental unit, I am unable to find this created a frequent and unreasonable disturbance.

While it is always difficult to reconcile conflicting testimony, it is the case that the party making the claim bears the burden of proving their claim on a balance of probabilities; consequently, where the testimony conflicts, and without corroborating and persuasive documentary evidence in favour of one version, the party who bears the burden of proof fails in proving their case.

I am also persuaded by the documentary evidence from the Tenants' relocation specialist, D.G. Clearly had the Tenants hired her to act as an intermediary, or mediator between themselves and the Landlord due to his aggressive behaviour, it would be inconceivable that she would inquire as to the availability of the rental unit after the tenancy ended. In making such inquiries, I find it highly unlikely the Tenants communicated their concerns to her, or that she was hired for the purpose alleged by the Tenants.

In all the circumstances, I find the Tenants have failed to prove the Landlord breached their right to quiet enjoyment.

Further, I am unable to find that the Tenants are entitled to the amounts claimed. The Tenants seek return of the entirety of their rent paid for 8.5 months; this is a significant claim and would only be awarded in the event the Tenants derived no benefit from the rental unit; the evidence simply does not support such a finding.

I also find that the Tenants agreed to the reductions to their security deposit by granting agency status to their relocation specialist who in turn agreed to these deductions. I therefore find they are not entitled to any further compensation from the Landlord.

Having been unsuccessful in their application the Tenants are not entitled to recovery of the filing fee.

Conclusion

The Tenants' Application is dismissed in its entirety.

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: January 17, 2018

Residential Tenancy Branch