



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 for a Monetary Order for loss. I accept the tenant applied, in part, for loss of quiet enjoyment, moving costs, and cost of alternate accommodations.

Only the tenant attended the conference call hearing. I accept the tenant's evidence they served the landlord with their application and all of their evidence by registered mail and that it was delivered and received by the landlord. The tenant was given opportunity to be heard, to present evidence and to make submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to compensation in the monetary amount claimed?

Background and Evidence

I have benefit of the tenancy agreement. The tenancy began May 01, 2017. The payable rent was \$1350.00 per month reduced from \$1450.00, as stated. The tenancy ended July 01, 2017 resulting from the parties' Mutual Agreement to end tenancy signed June 17, 2017. The tenant testified they rented solely the upstairs portion of a house which also contained a separate occupied suite in the basement at the outset of the applicant's tenancy until June 05, 2017 when the tenant downstairs vacated.

The tenant testified that during the downstairs tenancy they experienced a loss of quiet enjoyment, primarily from what they describe as noise intrusion, and intrusion by the downstairs children coming to the upstairs door via the stairwell. The tenant also testified that their toilet rested on a "soft" compromised floor which caused the toilet tank to flow over. When the tenant notified the landlord the landlord failed to respond to the

concern. The tenant also testified the downstairs tenant left garbage on the residential property which attracted rodents. The tenant informed the landlord of their issues to little avail; however the downstairs tenant suddenly vacated June 05, 2017.

The tenant testified that once the downstairs tenant vacated there was an influx of mice to the upstairs unit of which the landlord was notified and in response dropped off 5 mouse traps to the tenant. The tenant claims they were very upset over the presence of the mice and that as a result they suffered lack of sleep and left feeling unsafe in the unit. The tenant described experiencing feeling physically and mentally affected by the mice situation. As a result, shortly after the downstairs tenancy ended the tenant left the rental unit to sleep elsewhere for the remainder of June 2017. The tenant testified they removed all of their belongings before the end of June 2017.

The tenant seeks recovery of their June 2017 rent in compensation for loss of quiet enjoyment in the amount of \$1350.00. They also seek \$500.00 for moving and storage costs and \$1000.00 for payment of alternate accommodations for June 2017.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

Section 7 of the Act provides as follows in respect to the claims of the tenant for moving, storage and alternate accommodations.

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the tenant must satisfy each component of the test below:

1. *Proof the loss exists*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement*

3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
4. *Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

I find that in the absence of receipts verifying their claims the tenant has not submitted sufficient evidence of their loss. As a result I must **dismiss** the portions of the tenant's claim for moving, storage and alternate accommodations, without leave to reapply.

However, I find the tenant's claim for loss of quiet enjoyment reasonable. In the absence of a rebuttal by the landlord I accept the tenant's evidence in finding it unreasonable that the tenant be made to endure the intrusion of a mouse infestation until its eventual remedy. I also find the landlord's response to the mouse infestation as failure to take reasonable steps to correct the problem, leading to the tenant vacating the rental unit.

Section 28 of the Residential Tenancy Act states:

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;

Pursuant to common law I find that every tenancy agreement contains an implied covenant of quiet enjoyment: promising that a tenant shall enjoy the possession and use of their rental unit without undue disturbance. In such a tenancy relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interference to the tenancy. On preponderance of the evidence I find that the mouse infestation interfered with the tenant's right to freedom from unreasonable disturbance.

In determining the amount by which the value of the tenancy has been reduced, I have taken into consideration the seriousness of the situation, the degree it affected the tenant's ability to use their premises and the length of time over which the situation existed, which in this case effectively was a matter of approximately 2 weeks before the tenant determined they could no longer sleep in the unit. As a result, I find the tenant's claim of one month's rent in compensation extravagant. I therefore set the reduction to the value of the tenancy agreement at two thirds of the total value of the tenancy agreement, which effectively is an award equivalent to \$900.00.

As the tenant was in part successful in their application they are entitled to recover their filing fee of \$100.00, for a sum award of **\$1000.00**.

I grant the tenant a monetary Order under Section 67 of the Act for the amount of **\$1000.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application is granted in the above terms. I have dismissed all other claims by the tenant without liberty to reapply.

This Decision is final and binding.

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 11, 2018

Residential Tenancy Branch