



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented himself with the assistance of an advocate. The landlord was primarily represented by counsel.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee for the application from the landlord?

Background and Evidence

The parties agreed on the following facts. This tenancy began in April, 2017. There is no written tenancy agreement. The rent was \$1,750.00 payable on the first of each month. The rental unit is a detached building on commercial farmland where the landlord operates a business. The oral tenancy agreement provides that the tenant had exclusive use of a residential building, one garage, and a greenhouse.

The tenant was issued a 2 Month Notice to End Tenancy for Landlord's Use dated September 11, 2017 (the "2 Month Notice"). The tenant disputed the 2 Month Notice

and there was a hearing under the file number on the first page of this decision. The arbitrator for that hearing upheld the 2 Month Notice and issued an Order of Possession in the landlord's favour.

The 2 Month Notice provides that the rental unit will be occupied by the landlord or a close family member. The landlord testified that the rental unit has not been occupied as at the date of the hearing as they are doing some renovations. The landlord said that the unit will be occupied by the landlord's spouse's sister.

The parties gave evidence that the tenant paid the full amount of rent up to December 31, 2017 and the tenancy ended at that time.

The tenant gave evidence that during the summer months the landlord operates a consumer business selling vegetables on the property. The tenant said that due to the high volume of traffic from customers they suffered a loss of quiet enjoyment. The tenant testified that the customers would come at all hours of the day and night, disturbing the tenant. The tenant said that the vehicles driving onto the property were dangerous and a disturbance. The tenant gave evidence that they were prevented from accessing and using the garage and greenhouse due to the landlord's operation of the vegetable business.

The landlord gave evidence that the rental property is situated near an off-ramp and an airport and that there is always a high degree of noise and traffic. The landlord said that the tenant was informed prior to entering the tenancy agreement that the landlord operates a business on the lands. The landlord said that the volume and level of noise is no greater than would be reasonably expected on a farm operating a consumer business. The landlord disputes the tenant's claim that they have been prevented from using the garage and greenhouse that is part of the tenancy agreement.

Analysis

The tenant makes a claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

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;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

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 a 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 covenant of 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.

I find that the tenant has provided insufficient evidence in support of his claim. While I accept the evidence of the parties that there was some inconvenience caused to the tenant by the landlord's business I find insufficient evidence to conclude that the level of discomfort was unreasonable. The rental property is situated on a working farm with a commercial business during the summer months. A certain level of traffic and noise is to be expected. While the tenant submits that the level of noise was excessive and occurred for 24 hours I find that there is little evidence in support of the claim. I find the tenant's testimony that customers would access the property 24 hours to not have the air of reality. While there may have been some traffic after business hours, I find there is little evidence that it persisted throughout the night. I dismiss this portion of the tenant's claim.

The tenant seeks a monetary award of \$450.00 for the loss of use of the garage. Section 65 (1)(f) of the *Act* allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement.

I find that there is insufficient evidence in support of this portion of the tenant's claim. The landlord disputed the tenant's submission that they were unable to use the garage or greenhouse. There is little independent documentary evidence in support of the tenant's submission. I find that the tenant's testimony and handwritten notes and submissions to be insufficient evidence that there was a loss of use of any portion of the tenancy. I do not find the inclusion of the tenant's letters to the landlord to be persuasive as they simply reiterate the tenant's complaints. I find that the tenant has not met the onus on a balance of probabilities that there has been a loss of use of

facilities resulting in a loss in value of the tenancy. Consequently, I dismiss this portion of the tenant's application.

The landlord submits that the portions of the tenant's monetary claim arising from the 2 Month Notice was dealt with at the earlier hearing and I am barred from making a determination by the principles of *res judicata*.

However, the earlier decision dealt with the tenant's application to cancel the 2 Month Notice. The arbitrator upheld the 2 Month Notice and I find that it is open for the tenant to apply for a monetary award arising from the issuance of the notice.

Section 51(1) of the *Act* provides that:

A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

While the landlord submits that the tenancy did not end pursuant to the 2 Month Notice, the other arbitrator in the earlier hearing upheld the 2 Month Notice and issued an Order of Possession to the landlord. The tenant's right to financial compensation under section 51(1) is triggered upon receiving a notice to end a tenancy under the appropriate section. That the landlord did not enforce the Order of Possession to remove the tenant on the effective date is immaterial.

In the present case the parties gave evidence that the tenant paid the full monthly rent of \$1,750.00 until December 31, 2017. In accordance with section 51 the tenant was entitled to withhold the last month's rent. As they did not do so the tenant is entitled to compensation of the equivalent of one month's rent. Therefore, the tenant is entitled to a monetary award in the amount of \$1,750.00, the equivalent of one month's rent, under this heading.

Section 51(2) of the *Act* sets out that if:

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The landlord stated in the 2 Month Notice that the rental unit will be occupied by the landlord or the landlord's close family member. The landlord testified that the rental unit is currently being renovated with the intention that it will be occupied by the landlord's spouse's sibling.

Section 49(1) of the Act provides a definition of a close family member as follows:

“close family member” means, in relation to an individual,
(a) the individual's parent, spouse or child, or
(b) the parent or child of that individuals' spouse

A sibling of a spouse is not a close family member as defined in the *Act*. I find that based on the evidence of the landlord, they are not taking steps to accomplish the stated purpose for ending the tenancy. They are intending for a family member who is not a close family member as defined in the *Act* to occupy the rental unit. Therefore, I find that the tenant is entitled to a monetary award of \$3,500.00, double the amount of monthly rent.

The tenant claims the cost of moving from the rental unit. I find that there is no basis for an award of these costs. The cost of moving was not incurred due to a violation of the *Act*, regulations or tenancy agreement by the landlord. Accordingly, I dismiss this portion of the tenant's claim.

As the tenant's claim was successful in part I find that the tenant is entitled to recover the \$100.00 filing fee for this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$5,350.00 under the following terms:

Item	Amount
1 Month Rent	\$1,750.00

Double 1 Month Rent	\$3,500.00
Filing Fees	\$100.00
Total Monetary Order	\$5,350.00

The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: February 2, 2018

Residential Tenancy Branch