



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAKOLA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Both tenants and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other.

The parties agreed that the landlord had not provided evidentiary material to the tenants within the time required under the Rules of Procedure, and the landlord's agent agreed that it not be considered. Since the parties have agreed, none of the landlord's evidence is considered in this Decision. No further issues with respect to service or delivery of documents or evidence were raised, and all evidence of the tenants has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for breaching a term of the tenancy agreement?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The first tenant (DJB) testified that this tenancy began on June 1, 2013 and the tenants still reside in the rental unit. Rent is subsidized, and the tenant believes the tenants' current rent payable is \$631.00 per month due on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$355.00 and no pet damage deposit was collected. The rental unit is one of 4 units within a 4-plex complex.

The tenant further testified that the tenants complained to the landlord in the beginning about alcohol consumption on the premises. The tenancy agreement specifies that it's a "dry" unit and any alcohol in the rental unit will cause the landlord to be able to evict the tenant. However, everyone is partying. The tenant in the next rental unit drinks alcohol and smokes marihuana. The tenant has seen the neighbouring tenant drunk outside and called police when he was passed out in the driveway. No charges resulted and the police told the tenants they should avoid each other. However, it's not nice to have people drunk, and the neighbouring tenants fight and attacked the tenant's wife and punched her in the stomach who was still recovering from a C-Section. That was 3 years ago and the tenant's wife pushed back. The tenants also have 3 small children and can't let the children play outside because of people being drunk or high.

The parties had been to arbitration in October, 2016 wherein the tenants had applied for an order that the tenants be permitted to change the locks to the rental unit, for an order limiting or setting conditions on the landlord's right to enter the rental unit and for an order that the landlord comply with the *Act*, regulation or tenancy agreement. The tenant testified that the Arbitrator did not make any orders but told the tenants that since they hadn't applied for monetary compensation, no such order could be made at that time.

The tenant further testified that 25 letters and 56 emails have been sent to the landlord asking the landlord to talk to the neighbouring tenants or evict them. A manager of the landlord told the tenant that the tenancy agreement will be changed to no longer designate the complex as a "dry" environment.

The second tenant (NDB) testified that the landlord's website has a Mission Statement of being a safe environment. The name of the complex means "a safe place," but it definitely is not due to the amount of alcohol and drug use. The tenant is afraid to walk from the car into the house because of all the drunks and police presence a lot. The tenant won't open the door and guests know to text before arriving to visit because the tenant won't open it. The tenant has had to go to counselling due to drama in the complex. Numerous photographs, emails and letters have been provided as evidence for this hearing.

The tenants do not drink alcohol or smoke marihuana, and have not signed a new tenancy agreement removing the no smoking or drinking clause, and the landlord should be held to the tenancy agreement and live up to its name.

The tenants claim \$35,000.00 for four years of loss of quiet enjoyment.

The landlord's agent testified that the "dry" project was in the tenancy agreement many years ago under previous management. However, new tenancy agreements do not follow that clause because it's not enforceable.

During the hearing in 2016 the tenants raised issues of a lot of units and only one still resides in the complex. The landlord follows steps, by giving warning letters and notices to end the tenancies but that can take quite some time. The only tenant still residing in the complex is a personal problem for the tenants, and police told them to stay away from each other. No one has been charged and if there was an assault, the landlord's agent assumes there would have been charges. Lots of children play outside.

The landlord's agent further testified that no other tenants have complained about the tenant that still remains, and 90% of the tenants' complaints about that neighbour are about parking.

The landlord offered a transfer to a 3 bedroom house and \$1,000.00 for moving costs, and agreed to waive the first month's rent, but the tenants decided not to move.

Analysis

Where a party makes a monetary claim for damage or loss as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate the damage or loss suffered.

In this case, the tenants have applied for monetary compensation for the landlord's failure to provide housing in accordance with a "dry," or no alcohol and drug free environment. The landlord's agent testified that such a condition is not enforceable, and I agree. The tenants did not dispute that the landlord offered, in writing, to move the tenants to another 3 bedroom unit and pay \$1,000.00 for moving expenses and waive

the first month's rent. The landlord's agent also testified that the tenants' complaints have largely been about parking, and I have reviewed all of the evidence and agree.

Considering the photographs depicting children playing in the complex common areas, and the undisputed testimony of the landlord's agent that all of the neighbouring tenants have moved with the exception of one that the police told the parties to stay away from each other, it appears to me that the tenants have exaggerated the conditions.

In the circumstances, I find that the tenants have failed to establish element 4 in the test for damages, and the tenants' application is hereby dismissed in its entirety.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

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: March 29, 2018

Residential Tenancy Branch