



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MNSD, MNDC

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This matter was heard on November 21, 2017 however we were unable to complete the hearing at that time and the matter was adjourned to today's date.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision. The parties acknowledged receipt of evidence submitted by the other.

Since this matter was adjourned, the issue of the security deposit was addressed in a separate hearing; file #265673. The landlord was granted the right to retain the security deposit in partial satisfaction of a monetary claim. As the security deposit has been dealt with, the tenant's application for return of the deposit is moot; accordingly, I dismiss that portion of their application. This was explained in detail to all parties and they indicated that they understood.

The only issue that this decision will address is whether the tenants are entitled to a monetary order of \$850.00 for the loss of quiet enjoyment. Both parties advised that they understood and the hearing proceeded and completed on that basis.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation for loss or damage under the Act, regulation or tenancy agreement?

Background, Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

The tenancy began on December 7, 2013. Rent in the amount of \$850.00 was payable on the first of each month. The tenant's moved out sometime in September 2017.. NA testified that she suffered from anxiety and stress as a result of the landlords' aggressive behaviour. VB testified that she was fearful of the landlord and their agents. VB testified that her vehicle was damaged and had graffiti sprayed on it. VB testified that she feels it was the landlord or his agents that damaged her vehicle. VB testified that the landlord and his agents would show up unannounced and without proper notice and demand entry into the home. VB testified that when notice was given it was for a very broad time frame lacking in specifics. VB and NH testified that the landlord did not respect their right to file a dispute in regards to a notice to end tenancy. Both tenants testified that the amount they are seeking is very reasonable.

The landlords' testimony is as follows. WS testified that 98% of the tenant's testimony is false. MR testified that if anyone deserved monetary compensation it should be JE. WS testified that JE purchased the home and was denied access to it by the tenants to the point where he put the home back on the market to sell it. WS testified that JE could not deal with the aggressive behaviour or the abuse by the tenants'. WS testified that when JE would go onto the property the tenants would call the police. WS testified that this occurred two or three dozen times. WS testified that "it was an absolute circus in dealing with these two". WS testified that in his 14 years as a realtor he had never encountered such "aggressive uncooperative tenants".

WS testified that the tenants' behaviour was so bad, that he was forced to video record himself and the landlord and the tenants, any time they had to attend to the property to protect themselves.

Analysis

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality I find the landlords agent WS to be a more credible witness than either of the tenants. WS provided consistent, logical testimony which was supported with documentary evidence where available. WS admitted when he could not recall specific facts and, where appropriate, referred to his notes and documents prepared prior to this hearing to assist his recollection.

The tenants were argumentative, focused on irrelevant matters and conducted themselves in an agitated and irrational manner. I found that much of the tenant's submissions have little to do with the matter at hand and was concerned with attacking the WS and making themselves appear to be the wronged party. When given the opportunity to cross-examine the landlord or WS the tenants chose to ask irrelevant personal questions rather than any substantive matter. Towards the conclusion of the hearing the tenant continually interrupted WS testimony, shouting disagreement with his evidence.

Based on the foregoing, where the evidence of the parties clashed I found that the WS's version to be more credible and consistent with how a reasonable person would behave.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or

damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Further to the above, the tenants made allegations of vandalism, harassment and lack of respectful dealings with the landlord. The relationship between the parties is an acrimonious one and that was evident throughout the hearing. Regardless of the relationship, the tenants did not provide sufficient evidence to support their claim for loss of quiet enjoyment. Furthermore, the tenants have not provided sufficient evidence to show the loss suffered. Based on the insufficient evidence before me and on a balance of probabilities, I dismiss the tenant's application in its entirety.

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Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

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 20, 2018

Residential Tenancy Branch