Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MND

Introduction
This hearing dealt with two (2) Applications for Dispute Resolution filed by the tenant.

The Application for Dispute Resolution filed on March 1, 2018, seeks a monetary order for monetary loss or other money owed and to have the landlord comply with the Act, regulation, or tenancy agreement.

The Application for Dispute Resolution filed on April 4, 2018, seeks to cancel a One Month Notice to End Tenancy.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered for each of the above applications.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified that both the Application for Dispute Resolution and Notice of Hearing were sent by registered mail. The first package was sent on March 3, 2018 and the second package was sent on April 5, 2018. Canada post tracking numbers were provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

Preliminary and procedural matter
At the outset of the hearing the tenant indicated that they vacated the premises on April 30, 2018. Since the tenant is no longer residing in the rental unit, I find it not necessary to consider the merits of the tenant's application filed on April 4, 2018.

At the outset of the hearing the tenant was asked to explain how they arrived at the monetary amount claimed of $4,700.00. The tenant stated they arrived at the amount as they seek compensation for the return of two (2) month's rent in the amount of $3,600.00 and the return of their security deposit and pet damage deposit.

As the tenant's application was filed on March 1, 2018, and the tenancy had not ended, I find the request for the return of their deposits premature. Therefore, I will only consider the tenants request for compensation in the amount of $3,600.00.

Issue to be Decided

Is the tenant entitled to monetary compensation?

Background and Evidence

The tenancy began on October 1, 2017. Rent in the amount of $1,800.00 was payable on the first of each month. The tenant paid a security deposit of $900.00 and a pet damage deposit of $200.00. The tenancy ended on April 30, 2018.

The tenant testified that during their tenancy the landlord breached the Act, by making noise, which resulted in their loss of quiet enjoyment. The tenant stated when they moved in to the premises that the landlord was aware that they had to be up at 4:30am each day to go to work and the landlord often woke them during the night.

The tenant testified that they did not have their documents to refer to; however, they have been filed into evidence for review.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or 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 tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

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 Branch Policy Guideline #6,

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 **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 entitlement to 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.

[My Emphasis Added.]

The tenant's submitted complaints are as follows.

The first complaint on Saturday October 7, 2017, the tenant asked the landlord to turn down their television, this was at 9:44pm. A later complaint was that the landlord exited through the garage, waking the tenant up.

The second complaint on October 8, 2017, was again complaints about the landlord leaving the property at 6am and again exiting or entering between 10pm and 1am, waking the tenant up.
The third complaint on October 20, 2017, was that the landlord and a guest were intoxicated and obnoxiously loud.

The fourth complaint on December 13, 2017, is in regards to the garage door being opened at 9:59pm the following evening.

The balances of the complaints are in relation to the tenant's dog being at large.

I have reviewed the tenant's documentary evidence. I find the tenant has failed to prove the landlord has substantial interfere with the use of the premises. The majority of the complaints are from the landlord exiting through the garage. The landlord is entitled to use their garage to enter or exit the premises at any time they chose. Simply because the tenant's bedroom is attached to the garage does not give the tenant the right to restrict the landlord access or tell the landlord how to access their own property. This is normal household noise.

Further, I find the complaint on October 7, 2017, of the landlord playing their television loud or entertaining a guest on October 20, 2017, does not support this was ongoing unreasonable noise. This is a wood construction house and it is not uncommon that noise will travel.

Furthermore, the landlord is in no way responsible for the tenant's dog being at large. The tenant's dog should be supervised at all time when not left inside the rental unit.

In light of the above, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's application is dismissed 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: May 11, 2018

Residential Tenancy Branch