



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of double the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant states that the Landlord has returned the full security deposit and the Tenant withdraws its claim for return of double the security deposit

Issue(s) to be Decided

Has the Landlord breached the Tenant’s right to quiet enjoyment of the unit?

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started at the current unit in August 2011 and ended on December 31, 2107. Rent of \$938.00 was payable on the first day of

each month. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit. The Landlord has returned the full security deposit.

The Tenant states that three previous hearings were held in relation to disputes between the Parties, all under the Tenant's applications. The Tenant states that the Landlord lives in the unit beside the Tenant and has caused the Tenant an escalating loss of quiet enjoyment and privacy for well over 24 months to the end of the tenancy. The Tenant claims \$25,000.00 based on a loss of \$1,000.00 each month for the acts or negligence of the Landlord as set out below.

The Tenant states that the previous Decision dated February 21, 2017 sets out the Landlord's agreement to not video the Tenant. The Tenant states that despite this agreement and on May 19, 2017 the Landlord took both video and photo recording of the Tenant's belongings in a spare room of the unit. The Tenant states that from July 7 to September 2, 2017 the Landlord also repeatedly came and sat outside facing the Tenant's deck and took videos or photos of the Tenant and his guest while they were outside the unit. The Tenant states that the acts of the Landlord were very disturbing to the Tenant and that he and his guests would leave the deck within 10 or 15 minutes after which the Landlord left. The Tenant provides a photo of the Landlord and submits that it shows the Landlord on her deck pointing her cell phone at the Tenant.

The Landlord states that she took photos of the spare room during an inspection as the Landlord was advised by a previous arbitrator that the Landlord was allowed to take photos of illegal items found in a rental unit. The Landlord denies recording the Tenant and his guests from her deck. The Landlord states that she simply sits outside. The Landlord states that although she received an evidence package from the Tenant no photo of the Landlord on her deck was in the package. The Landlord states that she only received a piece of paper with a fence on it. The Tenant states that the photo was provided to the Landlord in a 42 page evidence package.

The Tenant states that the Landlord has a parrot that makes a lot of noise and has done so since the tenancy started. The Tenant state that for the longest time he did not complain about the noise but after the Landlord started harassing the Tenant the Tenant started to make complaints. The Tenant states that he sent several letters to the Landlord about the noise from the bird. The Tenant states that the parrot would squawk loudly at all times of the day and night. The Tenant states that the noise was irritating and disturbed the Tenant's sleep.

The Landlord states that the Tenant only complained about the bird as a way to harass the Landlord and that the Tenant had raised this issue when it made its applications resulting in the Decisions dated July 28, 2016 and February 21, 2017. The Tenant states that it did not raise this issue at the previous hearings and that it was not the subject of any claim dealt with in the previous Decisions. The Tenant states that the bird continued to make noise after the last hearing.

The Tenant states that on a near daily basis, and on occasion more than once a day, between July and September 2017 the Landlord sprayed aerosol at the Tenant while the Tenant was on his deck. The Tenant states that the Landlord also sprayed aerosol on the Tenant's door a couple of times in July 2017 and every few evenings thereafter. The Tenant states that the substance left on his door required the Tenant to clean the door. The Tenant states that the spraying from the Landlord's window would occur whenever the Tenant stepped outside. The Tenant provides a photo of the Landlord's screen and states that this photo shows the chemicals dripping down. The Tenant states that the police were called repeatedly as the substance was heavy and disturbing. The Tenant states that the Landlord finally stopped after the last police visit and that the police were not happy about having to come and speak with the Landlord.

The Landlord states that the Tenant's door was never sprayed and that the Landlord only sprayed insider her unit and down the hallway. The Landlord agrees that the police came "quite a few times" to discuss the Tenant's complaint. The Landlord states that

this matter was all resolved by the police. The Landlord states that she was not spraying the aerosol outside and that the fan placed by the window was blowing out the spray outside from the interior of the Landlord's unit. The Landlord states that although the tenancy agreement allows the Tenant to smoke marihuana outside the unit, the Landlord does not like the smell and believes that the Tenant was allowing guests to smoke marihuana creating greater smoke smell. The Landlord states that she only sprayed when she could smell marihuana and only sprayed when the Tenant was outside with his guests. The Landlord states that she had no problem with the level of smell when the Tenant was alone but "for some reason" when the Tenant had guests the smell would enter the Landlord's unit. The Landlord states that she is assuming that the guests were smoking marihuana because she does not smell anything when the Tenant smokes outside alone. The Landlord states that she has several tenants in the building who use medical marihuana but that these tenants are considerate about the smell. The Landlord states that she only had a problem with the Tenant and that he must have had guests smoking as the smell was so powerful. The Landlord states that after the police came she would close her window but that on occasion she would forget and leave the windows open while she was out of the unit and when she returned she would have to spray. The Landlord states that she also would need to open her window to cook or when it was hot in the unit.

The Tenant states that he is a medical patient who uses medical marihuana. The Tenant states that guests were ever allowed to smoke on the deck. The Tenant states that the spraying stopped after September 4, 2017, likely as a result of the last call to the police.

The Tenant states that near the end of August 2017 he noticed a bad garbage smell coming from the unit below and that on September 15, 2017 a deceased body was found in the unit. The Tenant states that after the body was removed nothing was done in the unit until the family members came two weeks later to remove the deceased person's belongings. The Tenant states that by this time the smell was "really awful"

and that it permeated his kitchen for almost 4 months. The Tenant states that the body was found in the bedroom that was located under the Tenant's kitchen. The Tenant states that on September 16, 2017 he sent a letter of complaint to the Landlord. The Tenant states that he also complained on October 1 and November 25, 2017 and the only response from the Landlord was "good, leave". The Tenant states that the smell remained until he moved out and that the unit was empty to that point as well. The Tenant states that when the Landlord removed the floors and carpets they just dumped everything in the parkade and that the Tenant has to complain twice to the health authorities because of the smell outside.

The Tenant states that he has chronic anxiety that was worsened by the Landlord's actions and negligence. The Tenant states that a medical letter to this effect was provided as evidence.

The Landlord states that there were no complaints from the Tenant. The Landlord also states that the Tenant did make verbal complaints "just in passing". The Landlord also states that the Tenant made a written complaint dated November 28, 2017. The Landlord states that she informed the Tenant that the matter was addressed. The Landlord states that the Landlord worked to bag items in the unit until the end of September 2017 and that the flooring and carpet was removed by mid-October 2017. The Landlord states that the bags in the back were properly sealed. The Landlord states that there was no smell in the Tenant's unit. The Landlord states that no inspection was ever made in the Tenant's unit to confirm that no smell was in the Tenants' unit. The Landlord states that they only inspected other units and the roof to confirm that there was no smell. The Landlord states that the amount of compensation being claimed by the Tenant is excessive.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy and freedom from unreasonable disturbance.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss.

Given the Landlord's inconsistencies and contradictions on several points of its own evidence I consider the Landlord's evidence overall to be unreliable. I therefore prefer the Tenant's evidence and find on a balance of probabilities that the Tenant did provide in its evidence package to the Landlord a photo that shows the Landlord holding a recording device directed at the Tenant. Given this photo and the Tenant's compelling oral evidence I find on a balance of probabilities that the Landlord was either taking photos or video of the Tenant and his guests or was attempting to portray that this was being done. I accept that this disturbed the Tenant to the point that he and his guests had to leave the deck earlier than they might otherwise have done. Considering the undisputed evidence that the Landlord stopped spraying after the last of several police visits to the Landlord and considering the Tenant's evidence of the smell I also find that the Tenant has substantiated that the Landlord acted negligently to cause a smell outside the unit and a substance on the door of the unit. Further and given the Landlord's evidence that she did not like the smell of marijuana, it appears that the Landlord may have been purposely trying to disturb the Tenant while he had guests as the Landlord could do nothing about the Tenant's right to smoke medical marijuana while the Tenant was alone.

Nonetheless, as the matter of compensation is restricted under the Act to losses to the tenancy, as the Tenant did not claim aggravating damages but did provide supported evidence of increased anxiety for at least two months, as the Tenant did not provide any evidence of the usual amount of time spent on the deck for the period in question, and as the Tenant otherwise had full use of the unit at the rent of \$938.00, I can only find the

Tenant has substantiated a reasonable and proportionate loss of \$200.00 per month for the Landlord's breach of the Tenant's right to quiet enjoyment of the deck for approximately two months in the total amount of **\$400.00**. As the Tenant did not provide any evidence of the cleaning time spent on the door of the unit I find that the Tenant has only substantiated a nominal amount of **\$50.00** for this disturbance by the Landlord. Based on the undisputed evidence that the Landlord took photos of the Tenant's personal belongings in the spare room, whether the Landlord deemed them to be illegal or not, I also find that the Landlord breached the Tenant's right to privacy on May 19, 2017 and that the Tenant has substantiated a nominal amount of **\$50.00** for this one time breach of privacy.

Based on the undisputed evidence that a deceased body had been in the unit below the Tenant for some time before its removal, I accept that the Tenant was subjected to a disturbance. However as there is no evidence that the Landlord knew about the body earlier I find that the Tenant has not substantiated any negligence of the Landlord to the point of the removal of the body on September 15, 2017. Accepting the undisputed evidence that the Tenant complained to the Landlord almost immediately after the body was removed and as the Landlord did nothing to remove soiled articles until approximately a month later I find that the Landlord acted negligently in providing the Tenant with peaceful enjoyment of the unit to that point. Given the undisputed evidence that the Landlord never inspected the Tenant's unit for odors and considering the Tenant's credible evidence of smell and continuing complaints to the Landlord I find that the Landlord continued to be negligent in providing the Tenant with peaceful enjoyment until the end of the tenancy on December 31, 2017.

Given the undisputed evidence of the loss of use of the kitchen in particular but considering the Tenant's global claim for a monthly loss that is greater than paid for the unit I find that the Tenant has substantiated no more than a reasonable proportionate amount of half the rent paid or \$469.00 per month per month for the period September 15 to December 31, 2017 in the total amount of **\$1,641.50** ($\$234.50 + \469×3).

Based on the Tenant's undisputed evidence that the parrot made the same noise continuously from the onset of the tenancy and that the Tenant did not complain until much later in the tenancy and after he felt harassed by the Landlord I find on a balance of probabilities that the disturbance could only have been relatively minor. I find therefore that the Tenant has not substantiated that the Landlord breached the Tenant's right to quiet enjoyment of the unit by having the parrot.

I note that given the evidence of complaint letters from the Tenant in relation to the above four areas of disturbances I find that the Tenant acted reasonably to inform and therefore attempt to minimize the losses caused by the Landlord's acts and negligence. As the Tenant's application has met with some success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,241.50**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,241.50**. If necessary, this order may be filed in the Small Claims 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: September 12, 2018

Residential Tenancy Branch