



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RP JOHNSTON CONSTRUCTION (AKA RIVERWALK VILLA INC)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT MNSD

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and an agent for a landlord company attended the hearing and each gave affirmed testimony. The tenant was also accompanied by a Legal Advocate. The parties, or the Legal Advocate, were given the opportunity to question each other and give submissions.

No issues respecting service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for all or part or double the amount of the security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of quiet enjoyment of the rental unit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on October 1, 2013 and ended on October 31, 2016. Rent in the amount of \$675.00 per month was originally payable on the 1st day of each month, but was raised during the tenancy, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$337.50, and no pet damage deposit was collected. The rental

unit is an apartment in a complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that the landlord was provided with a forwarding address of the tenant on September 30, 2016 but a copy has not been provided for this hearing. The tenant provided the forwarding address to the landlord again on October 7, 2016 and a copy has been provided for this hearing. It was hand-delivered to the person in the landlord's office on October 7, 2016. The landlord returned \$137.50 to the tenant on or about November 22, 2016. Two versions of a "Tenant Move-out Statement" have been provided for this hearing, and the tenant testified that the document was changed after the tenant signed it, and the tenant did not agree that the landlord retain any portion of the security deposit.

Move-in and move-out condition inspection reports were completed at the beginning and end of the tenancy, and a copy has been provided. The tenant testified that the move-out portion was completed on November 1, 2016, and at the time, the manager told the tenant that the full security deposit would be returned. When the tenant enquired about it on November 18, 2016 another agent of the landlord told the tenant that there might be some changes to the refund and that it had been referred to the head office. The tenant asked for a copy of the "Tenant Move-out Statement" and the copy received had been altered.

The landlord has not served the tenant with an Application for Dispute Resolution claiming against the security deposit, and the tenant claims double the amount, less the \$137.50 that the landlord returned, for a total of \$537.50 ($\$337.50 \times 2 = \$675.00 - \$137.50 = \537.50).

The tenant has also provided a Monetary Order Worksheet setting out the following claims:

- \$3,600.00 for 36 months of loss of quiet enjoyment;
- \$45.00 for loss of parking; and
- \$537.50 for the balance of the security deposit.

The tenant testified that the claim for loss of parking is withdrawn.

With respect to loss of quiet enjoyment of the rental unit, the tenant testified that the claim is 3 years of such a loss at \$100.00 per month, starting in October, 2013 until October, 2016. It took the previous landlord 5 to 7 months to kick out nuisance tenants, who often startled the tenant and kept her awake. The tenant had requested compensation from the first landlord in a letter, but to no avail, and the landlord sold the building. The tenant is handicapped, and in a wheelchair, and most of the complaints are of noise and disturbances during the night, and the tenant is unable to sleep. Several complaints in

writing were given to the landlord, in the tenant's letters and in forms that the landlord's agents required the tenant to use. The complaints include thumping, partying, people climbing on the tenant's balcony to get to another apartment, loud music and TVs and guests of other tenants. The letters and notes also mention an animal running and a balcony door slamming on several occasions, as well as the tenant's buzzer sounding and a lady singing.

The tenant also testified that despite requests for repairs, the landlord never completed them. The storage room had a musty smell due to old gyprock in the walls and ought to have been replaced, but the landlord had it painted and not replaced and the smell returned as days passed and the oil based paint bothered the tenant.

The bathroom door wouldn't close and the wooden trim that the latch is on was coming off. The landlord again had it repaired instead of replacing it, and it still never properly closed.

The landlord's agent testified that \$200.00 of the security deposit was withheld by the landlord because no receipt had been provided by the tenant for carpet cleaning, which was a requirement of the tenancy agreement. The landlord received only a note from a gentleman who said it had been done "complimentary."

The landlord's agent further testified that the rental complex was purchased only 12 months prior to the end of this tenancy, and repairs had been made by the previous and present landlord.

The first letter the current landlord received from the tenant is dated July 6, 2016 respecting repairs required to plugs and drywall repair and the bathroom door handle. Repairs were made to the plugs and bathroom door on July 27, 2016. In attempting to address the storage room walls, the tenant had the room filled with items and the landlord couldn't access it. The landlord tried again on August 8, but the tenant was away and couldn't be there to let the repair person in.

Tenants on both sides of this rental unit were given letters about noises, violations of their tenancy agreements and to respect other tenants.

Analysis

Firstly, with respect to the security deposit, unless a tenant otherwise agrees in writing, a landlord must return a pet damage deposit or security deposit, or both, in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an Application for Dispute Resolution

claiming against it within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

In the evidence provided for this hearing, it is clear that the tenant signed the "Tenant Move-out Statement" and an agent of the landlord changed it, and therefore the tenant did not agree in writing that the landlord retain any portion of the security deposit. I find that the tenancy ended on October 31, 2016 and the landlord received the tenant's forwarding address in October 7, 2016. The tenant testified that the landlord has not served the tenant with an Application for Dispute Resolution and I have no such application before me. Therefore, I find that the landlord must repay the tenant double the amount, less the \$137.50 already returned to the tenant. For clarity, the landlord owes the tenant \$537.50 ($\$337.50 \times 2 = \$675.00 - \$137.50 = \537.50).

Where a party makes a monetary claim for damages 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 *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The tenant has not provided any evidence or testimony of how the repairs made instead of replacing gyprock and a door frame or door jam caused the tenant any grief. Any award that I may make cannot be made to punish the landlord for any wrong-doing. I find that the tenant's claim for the repair required to the bathroom door is made to punish the landlord and that the tenant did not suffer damages at all as a result of the landlord's failure to make the repair to the tenant's satisfaction.

With respect to the musty smell, again there is no evidence or testimony to support that the claim isn't being made to punish the landlord. There is no medical evidence of illness or evidence that any mold caused the tenant to suffer. Further, the landlord has provided evidence that the tenant failed to mitigate by clearing out items from the storage room as the landlord had requested the tenant to do in writing.

With respect to loss of quiet enjoyment caused by other tenants' noise and disturbances, the landlord testified that notices were given to them, and the tenant testified that it took the landlord 5 to 7 months to have them removed. Unfortunately for both parties, removing a tenant for causing disturbances is a slow process. The landlord would have to give written notice that the tenants were in violation of the tenancy agreement and an opportunity to correct the breach, prior to issuing any notice to end their tenancies. The

landlord's agent testified that notices were given to those tenants, and therefore, the landlord has complied with the law. I am not satisfied that the tenant has established that monetary compensation should be provided to the tenant for the landlord's failure to comply with the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to section 67 of the *Residential Tenancy Act* in the amount of \$537.50.

This order is final and binding and may be enforced.

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: October 11, 2018

Residential Tenancy Branch