



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORT ROYAL VILLAGE DEVELOPMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

On November 5, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for compensation, an order for the Landlord to comply, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord’s representatives and the Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord acknowledged that he received the Tenant’s evidence package; however, the Tenant stated he did not receive an evidence package from the Landlord. The Landlord testified that he sent an evidence package to the Tenant via registered mail on November 28, 2018 and provided the tracking number during the hearing. I checked the Canada Post website and it indicated that a notice was left at the Tenant’s door on November 29, 2018 with information on where and how to pick up the package; which was never picked up. I find that the Landlord served his evidence, in accordance with Section 88 of the Act, and therefore, the evidence should be admitted into the hearing.

Issues to be Decided

Should the Tenant receive a Monetary Order for compensation due to the Landlord sending the Tenant “breach notices” and secondly, due to the Landlord not providing the rental unit in a clean manner, in accordance with Section 67 of the Act?

Should the Landlord be ordered to comply with the Act, in accordance with Section 62 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord and the Tenant agreed on the following terms of the tenancy:

The Tenant moved into the rental unit on July 29, 2017. The tenancy is a one-year, fixed term tenancy that would continue on as a month-to-month tenancy. The rent is \$2,834.00 and due on the first of each month. The Landlord collected and still holds a security deposit of \$1,362.50 and a pet damage deposit of \$1,362.50.

Tenant’s Evidence:

Compensation for losses due to Landlord managing noise complaints

The Tenant testified that he has a two-year old son at home and that the tenant below him has been complaining about the noise to the Tenant and to the Landlord.

The Tenant stated that in January of 2018, he used to play in the hallways with his son and after receiving a complaint about the noise, stopped that activity.

In February 2018, the Tenant received a letter from the tenant below him about the noise. The Tenant stated he has been attempting to minimize his son’s noise, but that it’s natural for a two-year old to run around and drop toys. Regardless, the Tenant has placed extra carpets on the floor, talked to his son about being quiet and apologized to

the tenant below and to the Landlord. The below tenant has since moved, and a new tenant has moved into the unit.

On July 14, 2018, the Tenant received an email from the building manager indicating that the new tenant below complained about the Tenant's son running around past 9:30 p.m. In the email, the building manager stated that any further complaints will be addressed through written notices.

The Tenant stated he had a friend over in early September 2018, who had a five-year old with him; there was quite a bit of noise from the children. The Tenant received a verbal complaint from the building manager after this event, that originated from the tenant below the rental unit about the noise. In response, the Tenant apologized to the tenant below and rearranged his living room furniture to reduce the noise to the tenant below. On September 5, 2018, the Tenant received a breach notice from the Landlord warning about continued noise and how that it could affect his tenancy.

On October 27, 2018, the Tenant stated he received a second breach notice from the Landlord that warned him about ongoing complaints of noise. The notice stated that complaints are coming from the Tenant's neighbours about "...you and/or your child running and stomping around for hours at a time throughout the day, in the mornings starting as early as 7am and in the evenings even pass 10pm..." The notice warned the Tenant about his conduct and responsibility not to disturb the peaceful enjoyment of the neighbours.

The Tenant stated that his son's activities are normal, that the sound transfer in the wooden building is what can be expected and that he can't stop his son from walking and running around his home. The Tenant said he feels targeted by the building management and is stressed by the fact that his tenancy may end because of the noise that he can't control.

The Tenant stated because of the Landlord's actions of sending the breach letters and threatening his tenancy, the Tenant hasn't been able to work and makes the following claim for compensation:

After receiving the breach notice on September 7, 2018, the Tenant stated he was stressed for a full week and that it has been affecting his ability to work. The Tenant is claiming 7 days worth of rent for a total of \$668.50.

After receiving the breach notice on October 27, 2018, the Tenant stated he was stressed for three days and is claiming 3 days worth of rent for a total of \$298.50.

The Tenant is seeking an additional \$945.00 for his time to research and apply for Dispute Resolution. The rate is calculated at the Tenant's lowest hourly consulting rate which is \$150.00 plus GST. The Tenant has estimated that the situation has cost him six hours of his time.

Compensation for construction dust left in rental unit prior to move in

The Tenant stated that there was a large amount of construction dust left in the rental unit upon moving in on July 29, 2017. The Tenant said the first month was "total hell and full of stress because we couldn't sleep due to the smell of construction dust..." The Tenant testified that it took him twenty-two hours to clean the rental unit.

The Tenant is claiming compensation of a full month's rent in the amount of \$2,755.00 and an additional \$600.00 to compensate for the half day he took off work on August 14, 2017, when the cleaners failed to show up at the appointed time.

Order the Landlord to comply with the Act

The Tenant had made complaints to the Landlord about the actions of the tenant who lives in the rental unit below the Tenant. The Tenant is requesting an order for the Landlord to provide any copies of breach notices or letters that have been sent to the tenant below about the complaints that Tenant has made about him.

The Tenant is also requesting that the Landlord be ordered to discard all the previous breach notices that the Landlord has sent to the Tenant.

Landlord's Evidence:

Noise complaints

The Landlord testified that they have had two different tenants that have lived under the Tenant and each of them have complained about the noise caused by the father and child running around the rental unit.

The Landlord stated that, although the Tenant has apologized, he has become more hostile and has been involved in verbal altercations with the tenants. The Landlord said it is fault of both the upper tenant and the lower tenant and the situation is worsening.

The Landlord testified that the verbal warnings, that have evolved into written breach notices, have been as a result of the Landlord's diligence to address the conflict between the tenants.

The Landlord stated that he has been working with the Tenant to resolve the issue and has even offered several options for the Tenant to relocate to another rental unit that would not cause problems for tenants below.

Construction Dust

The Landlord testified that cleaners did attend the Tenant's rental unit on August 11, 2017. The Landlord acknowledged that the cleaners did not have ladders to complete the job and rescheduled for August 14, 2017 to finish cleaning. The cleaners were unable to attend on the morning of August 14, 2017 as scheduled and when they attempted to attend later, the Tenant refused to let them enter. The Landlord stated that the cleaning could have occurred much earlier, but it was difficult to work with the Tenant for available times. The Landlord stated that the Tenant's partner was at the home during the week and could have let the cleaners into the rental unit.

Analysis

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the Landlord's testimony and evidence that indicates the Landlord is attempting to address conflict between tenants and in doing so, has issued verbal and written warnings to the Tenant.

The Tenant has claimed compensation due to stress caused by the Landlord following through on complaints and managing the tenants in the residential property. I accept the Tenant's testimony that he has felt stress. However, I find that the Tenant failed to provide sufficient evidence that his claimed loss stemmed directly from the Landlord's violation of the Tenancy Agreement or a contravention of the Act. Therefore, I dismiss this part of the Tenant's claim.

The Tenant has claimed a monetary loss due to his choice to conduct research, write letters and correspond with the Landlord. The Tenant stated that he calculated his compensation based on his lowest hourly consulting rate of \$150.00, plus GST. After considering the testimony and evidence, I find that the Tenant failed to provide any evidence to verify the actual monetary amount of his loss. Furthermore, my abilities to award compensation are restricted by Section 67 of the Act, which are described above, and limited to claims where damage/loss has stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. I therefore have no ability to return the costs associated with preparation for a hearing. I dismiss this part of the Tenant's claim.

The Tenant has claimed a monetary loss for having to live through construction dust in his rental unit. The Landlord provided emails about the negotiations with the Tenant about bringing cleaners in or providing \$200.00 in compensation for the Tenant's own efforts in cleaning. The Landlord also provided an email, dated August 16, 2017, that indicated the Tenant wasn't happy with the cleaners the Landlord provided on August 11, 2017 and that the Tenant wanted to hire his own cleaners.

I accept the undisputed evidence of the Landlord that they attempted to make arrangements with the Tenant to have his cleaning issues addressed, but that the Tenant refused further assistance after the first cleaning by the Landlord's cleaners. During the hearing, the Tenant acknowledged that his partner was at home during the week, but that he wanted to be present for the cleaners and therefore, took a half day off of work. As a result of the testimony and evidence presented, I find that the Tenant failed to provide sufficient evidence that he suffered a loss due to the Landlord's violation of the Tenancy Agreement or a contravention of the Act. I dismiss this part of the Tenant's claim.

The Tenant has applied to have the Landlord ordered to provide copies of warning letters between the Landlord and another tenant, and to have the Landlord discard the previous breach notices that were served on the Tenant. Section 62 of the Act authorizes me to make an order necessary to give effect to the rights, obligations and

prohibitions under this Act. I find that the Tenant has failed to provide sufficient evidence that the Landlord is breaching any rights, obligations or prohibitions under this Act. I dismiss this part of the Tenant's claim.

The Tenant has been unsuccessful in his Application; therefore, I do not award compensation for the filing fee, in accordance with Section 72 of the Act.

Conclusion

I dismiss the Tenant's Application 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: December 19, 2018

Residential Tenancy Branch