



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MND, MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), for the return of the security deposit and for monetary compensation for money owed.

Both parties appeared, gave 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 at the hearing.

Preliminary and procedural matters

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

The tenant stated at they have additional evidence, such as photographs, videos and other such documents that they did not provide to the landlord or the Residential Tenancy Branch because they feel they are entitled to submit them at a later date.

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

In this case the tenant was informed that their documents will not be accepted after the hearing for my review or consideration.

The tenant indicated they could file them under an application for a review consideration. The tenant was informed that any evidence in existence at the time of the hearing and not present by the tenant is not sufficient grounds for review

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation?
Is the tenant to the return of their security deposit?

Background and Evidence

The parties agreed that the tenancy began on or about November 15, 2013. Rent in the amount of \$500.00 was payable on the first of each month. The tenant paid a security deposit of \$250.00. The tenancy ended on September 14, 2018. The parties agreed the security deposit was returned.

The tenant claims as follows:

a.	Interest on security deposit at 1.8%	\$ 22.50
b.	Return of 30% of all rent paid	\$8,700.00
	Total claimed	\$8,722.50

Interest on security deposit

The tenant submits they are entitled to 1.8% interest on their security deposit that was held for five (5) years for the total amount of \$22.50.

Return of 30% of all rent paid

The tenant testified that during their tenancy the landlord breach a material term of their tenancy agreement, which was close to criminal. The tenant stated that they should be entitled to the return of 30% of all rent paid during their five (5) year tenancy. The tenant seeks to recover the amount of \$8,700.00.

The tenant testified that the landlord failed to comply with section 28 of the Act. The tenant stated that the landlord did not protect their rights from unreasonable disturbances and ongoing frequent noise from a wide variety of incidents.

The tenant testified that they were harassed by all the other occupants of the building, which included physical threats, and being spit upon.

The tenant testified that there was smoking in the building, which they were told it was a non-smoking building. The tenant stated that the stench would physically make their throat close up because they were told they were allergic to the smoke.

The tenant testified that there was a horrible stench in their rental unit which they were never able to determine the source and it gave them hives. The tenant stated that this might be from hard drugs that were used in the rental unit prior to their tenancy.

The tenant testified that there was ongoing slamming of doors. The tenant stated that they counted that it was 200 times.

The tenant testified that a strange man claimed to need access to their rental unit to deal with an infestation of hornets. The tenant stated that they did not give this person access and the told this person that they hornets nests starts on the outside of the premises and that is how it should be dealt with.

The tenant testified the landlords did not shovel of the snow in the winter.

The tenant testified that the emergency hatch on the 3rd floor was open and it should have been closed. The tenant stated that this was dangerous.

The tenant testified that in August of 2018, they could not take the noise as there was people coming and going every three minutes.

The tenant testified that during the day the noise was always unreasonable, people would have their music loud. The tenant stated they never informed the landlord of any noise that occurred during the day.

Filed in evidence is an affidavit of the tenant. Filed in evidence are two letters written to landlord. Emails sent to the RCMP.

The landlord testified that the tenant has trouble with everyone. The landlord stated that they live in a very small town and they cannot help if other tenants know each other. The landlord stated that the tenant has never been happy living in the building and they told the tenant they could live at any time without penalty.

The landlord testified that in the five years they have received two written letters from the tenant, both were in 2016.

The landlord testified that the hornets' nest was something they have never seen before as it was making the ceiling in the bathroom bubble. The landlord stated that they were never told of this and it was only discovered after the tenant vacated.

The landlord testified that they believed hornet's nest that was outside, which they sent someone to have it sprayed.

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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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-complying landlord or tenant must compensate the other for damage or loss that results.

Section 7(2) of the Act states that the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Interest on security deposit

The landlord has returned the tenant's security deposit. The tenant seeks to recover interest at the rate of 1.8%. However, the interest rate payable on a security deposit is determined by the Residential Tenancy Branch. I have used the appropriate calculation and determined there is no interest payable to the tenant as the interest rate was at 0% for the years of the tenant's tenancy. Therefore, I dismiss this portion of the tenant's application.

Return of 30% of all rent paid

In this case, the tenant is claiming 30% of all rent paid during their tenancy; however, I find the tenant has failed to mitigate as required by section 7(2) of the Act.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, the tenant has claimed for compensation for a large amount of issue that was alleged to have happened during the tenancy. While I accept any threats of violence and spitting on someone is not appropriate, I find that the tenant has not provided any documentary evidence that they notified the landlord of this incident at the time it occurred.

The tenant confirmed that they only provided two letters to the landlord; both letters were written in 2016. The first letter dated January 4, 2016, is primarily refers to issues of smoking and drug use. The second letter dated March 11, 2016, refers to problem with drugs, noise and the front door being left open. Neither letter provides dates, time or who is the source of the complaint.

Further, the tenant has provided no documentary evidence that they notified the landlord that these issues continued, giving details of dates, times or any other specific details such as who was involved. I find the landlord is not responsible for the action of another person, if they were not notified with specific details of events.

While the tenant submitted emails they sent to the RCMP, this was in the year 2016, and the start of 2017, the landlord was not include in the email. Further, there is no evidence that the police took any actions.

I find the tenant did not take appropriate steps, as it would have been reasonable to provide the landlord with current letters of complaints with sufficient information, such as whom, what, and when in order for the landlord to investigate their complaints.

I find if the tenant was not satisfied with the actions of the landlord during the five (5) years that they chose to live in the residence, it would have been reasonable for the tenant to take the appropriate steps to bring this matter forward. Rather, than to wait after their tenancy has ended allowing a claim to build for five (5) years.

Further, I find that the tenant provided no documentary evidence that they informed the landlord of the large hornets' nest that was starting to make their bathroom ceiling bubble. While I accept the landlord knew of a hornet nest, it appears they were told that it was on the outside of the building.

It would have been reasonable for the tenant to ask the landlord to come into their rental unit to inspection problem, rather than to insist the work be dealt with from the exterior.

Based on the above finding, 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: December 06, 2018

Residential Tenancy Branch