



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on December 17, 2018. The Tenant applied for multiple remedies, as follows, pursuant to the *Residential Tenancy Act* (the *Act*):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- a monetary order for return of the security or pet deposit; and,
- recovery of the filing fee.

Both sides were present at the hearing. All parties provided testimony and were given a full opportunity to be heard, to present evidence and to make submissions. Both parties confirmed receipt of each other's documentary evidence and neither party took issue with the service of these documents.

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.

The Tenant has applied to have the security deposit returned to him. However, I note that this issue has already been decided upon, on June 5, 2018, at a previous hearing. That decision and any orders that came from it remain in effect and I dismiss the Tenant's application on this ground, as the previous arbitrator already made an order about the security deposit.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

The Tenant stated that he is seeking \$1,500.00 in compensation for loss of quiet enjoyment. The Tenant stated that the Landlord lives upstairs with several teenaged kids, who are routinely noisy. The Tenant stated that although he has found them to be loud on numerous occasions, for the purposes of this application he is mostly concerned with the last two months (1.5) of his tenancy. The Tenant stated that he moved out on March 31, 2018, after finding it too noisy. The Tenant stated that monthly rent was \$1,000.00 and was due on the first of the month. The Tenant stated that starting on February 3, 2018, the kids upstairs were throwing lots of parties, and were disrupting his sleep at least 4 nights a week. The Tenant stated that he also found the smell of marijuana smoke during these gatherings was negatively affecting his use of the rental unit because the smoke was coming in his windows. The Tenant stated that he talked with the Landlord's kids a couple of times but the noise didn't go away. The Tenant did not present any other statements, recordings, or evidence to show the level of noise or partying.

The Tenant stated that the Landlord was away for part of the time, in Mexico, and while she was away, her kids threw parties. The Tenant stated that he was disturbed by the partying from early February up until February 22 when he left town for work. Then, when he returned on March 15, the Tenant stated it was just as noisy up until the end of the tenancy at the end of that month. The Tenant pointed out a period of about 5-6 weeks where he found it exceptionally noisy over February and March of 2018.

The Landlord acknowledges that she has teenaged children, and that there are often multiple people over, including other students. However, she disputes that there is any issue with the noise. The Landlord stated that the first time she ever got word from the Tenant that he was unhappy with the noise was on March 22, right before he moved out. The Landlord stated that she was away for part of the material time, in Mexico. The Landlord does not feel she should have to pay the Tenant any money for this noise issue, since there is such little evidence of it. The Landlord pointed out that there was a previous hearing where she was awarded compensation against the Tenant, and she feels this is in reaction to that, and this claim is unfounded.

Analysis

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

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. The Tenant must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

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.

After reviewing the totality of the evidence, and testimony before me, I am mindful that the Tenant has provided very little documentary evidence to support any of his claims. There is a lack of evidence to prove and help illustrate the level of noise present and when it may have occurred. The Tenant's evidence does not sufficiently substantiate his claim that the noise was bad enough for him to lose sleep. It also does not sufficiently establish that the Landlord's guests or friends were to blame for any smoke that entered his unit.

I also note the Landlord presented testimony directly refuting the Tenants' claims about noise and she feels it was not nearly as bad as he alleges. The Landlord stated she only ever got the one text message complaint from the Tenant just before he moved out.

In summary, the Tenant claims he is entitled to monetary compensation in the amount of \$1,500.00 for a period of about 1.5 months where he was negatively impacted by the Landlord (noise, smoke). This amounts to a 100% rent reduction for that material time, which appears to be excessive, considering the Tenant still had some use of the rental

unit during the period he is claiming for. In any event, I note each party has a different opinion with respect to the noise and partying that may have occurred, and without further evidence from the Tenant to meet the burden of proof, I find he has not provided sufficient evidence to support his claim for loss of quiet enjoyment. As such, his claim is dismissed in full, without leave to reapply.

Conclusion

The Tenant's application is dismissed, in full, 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 18, 2018

Residential Tenancy Branch