



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on November 13, 2018. The Tenants applied for a monetary order for compensation under the *Act* and to recover the filing fee paid for the application. The matter was set for a conference call.

One of the Tenants and the Landlord, the Landlord's son and the Landlord's brother (the "Landlord") attended the hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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.

Issues to be Decided

- Are the Tenants entitled to a monetary award for compensation pursuant to section 67 of the *Act*?
- Are the Tenants entitled to recover the filing fee paid of the application?

Background and Evidence

Both parties testified that the tenancy began on August 4, 2018, as a month to month tenancy, with no written tenancy agreement. The Landlord and Tenant agreed that rent in the amount of \$1,300.00 was to be paid by the first day of each month, and the Tenant had paid a \$650.00 security deposit at the outset of this tenancy. The parties also agreed that neither the move-in or move-out inspection had been completed for this tenancy.

The Tenant and the Landlord testified that the Tenants had moved out of the rental unit as of November 11, 2018. The Tenant submitted a copy of a mutual agreement to end the tenancy, signed by the Landlord and the Tenant, into documentary evidence.

The Tenant testified that he is requesting \$2,300.00 in compensation due to a loss of quiet enjoyment during his tenancy. The Tenant testified that the Landlord had required them to cook outside, had demanded that they did not use the fan in their bathroom and had refused to repair a water leak in the rental unit and would not treat a mouse infestation during the tenancy.

The Tenant testified that early in the tenancy he had come home to find his mother cooking on a hot plate outside. The Tenant testified that when he asked his mother why she was cooking outside, she had told him that it was because the Landlord had complained about the smell of their food and had told her she had to cook outside so that it wouldn't bother them. The Tenant testified that the Landlord had provided them with a hotplate so that they could prepare their meals outside.

The Landlord testified that the smell of the Tenants' food was very "pungent" and that it would seep into their unit upstairs. The Landlord agreed that they had asked the Tenants to cook outside and had provided them with a hotplate in order to accommodate this.

The Tenant testified that the Landlord had also told them they were not allowed to use the fan in their bathroom as it was too loud and that it disturbed the Landlord. The Tenant testified due to the requirement to not use the fan there was insufficient ventilation in the bathroom and it led to the formation of mould and made the living conditions in the rental unit unsafe.

The Landlord testified that she worked night shifts and had only requested that the Tenants not use the bathroom fan between 6:00 a.m. to 9:00 a.m. each day, as the fan was very loud and disturbed her sleep.

The Tenant testified that they had advised the Landlord of a water leak in the rental unit in early September 2018. The Tenant testified that the Landlord attended the rental unit and completed some minor repairs for the leak. The Tenant testified that the Landlord had not dealt with the cause of the leak, and only superficially treated the area where the leak had occurred. The Tenant testified that about a month later the water leak had returned. The Tenants confirmed that they notified the Landlord that the water leak had returned but stated that the Landlord refused to repair the second leak.

The Landlord testified that there had been a water leak in the rental unit, and that they had repaired it immediately. The Landlord also testified that they came back a month later when the Tenants reported a second leak, but that after they investigated the claim they found that there was no second water leak.

The Tenant testified that they had advised the Landlord of a mouse infestation in the rental unit but that the Landlord had refused to bring in a company to treat the problem.

The Landlord testified that there was no mouse infestation in the rental unit. The Landlord testified that when the Tenant advised them that there was a possible mouse infestation they put out traps, but that the traps never caught anything and that they never found any evidence for a mouse infestation of any kind, in the rental unit.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find as follows:

The Tenants are claiming for \$2,300.00 in compensation due to the loss of quiet enjoyment of the rental unit during their tenancy. Section 28 of the *Act* establishes a tenant's right to quiet enjoyment and reads as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

In determining if there has been a breach of the Tenants' right to quiet enjoyment, I must consider the guidance found in the Residential Tenancy Policy Guideline #6 Entitlement to Quiet Enjoyment, which states the following:

BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

"A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these"

I accept the verbal testimony of the Landlord, and they did place restrictions on the Tenants' use of the kitchen and bathroom during this tenancy. I find that this was a breached section 28(c) of the *Act*, as it placed restrictions on the ordinary and lawful enjoyment of the premises and unreasonably interfered with the Tenants right to exclusive possession of the rental unit. Consequently, I find that the Landlord was in breach of section 28 of the *Act*, during this tenancy and that the Tenants did suffer a loss of quiet enjoyment due to the Landlord's breach.

In determining the amount of compensation to be awarded to the Tenants, due to the Landlord's breach I must consider the Residential Tenancy Policy Guideline #6 Entitlement to Quiet Enjoyment, which states the following:

Compensation for Damage or Loss

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations"

I find that the loss of the undisturbed and regular use of the kitchen in the rental unit throughout this tenancy, to be a serious deprivation of the Tenants' right to exclusive possession of the rental. I also find that the combined restrictions, on the use of the kitchen and bathroom fan, placed on the Tenants during this tenancy would have substantially reduced the Tenants' enjoyment of the rental unit.

Due to the severity of the restriction placed on the Tenants use of the rental property during this tenancy, I find it appropriate to award the Tenants the return of half of all the rent paid tenancy, in the amount of \$2,188.33 for the loss of quiet enjoyment. This award consists of \$650.00 for August, \$650.00 for September, \$650.00 for October and \$238.33 for half of the 11 days in November 2018.

The Tenants have also claimed for compensation due to the Landlord not repairing the rental property. Section 32(1) of the *Act* requires a Landlord to provide a rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, and character of the building.

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I accept the testimony of both parties that the Tenants had reported to the Landlord that there was a water leak and a mouse infestation in the rental unit and that the Landlord did attend the property to attend the Tenants' request for repairs. However, I find that the parties, to this dispute, offered conflicting verbal testimony regarding the continued presence of a water leak and a mouse infestation, in the rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, that would be the Tenants.

I have reviewed the documentary and digital evidence submitted by the Tenants, and I find that there is insufficient evidence before me to prove that there had been a continued water leak and a mouse infestation in the rental unit after the Landlord

response to the Tenants' initial requests for repairs. In the absence of sufficient evidence to support their claim, I must dismiss this portion of the Tenants' claim.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant the Tenant a **Monetary Order** in the amount of **\$2,288.33**. The Tenants are provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: April 3, 2019

Residential Tenancy Branch