



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNDC OLC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to service of the tenant's applications and respective evidence submissions on file.

The tenant confirmed at the outset of the hearing that the matter for which this dispute was initiated had since been resolved so the tenant's request for an order requiring the landlord to comply with the Act, regulation or tenancy agreement was withdrawn.

Issues

Is the tenant entitled to a monetary order for compensation for damage or loss?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background & Evidence

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

The rental unit is a 1 bedroom apartment on the first floor of a six floor apartment building. The tenancy began on September 1, 2009. The current monthly rent is \$1260.00 payable on the 1st day of each month.

The tenant is claiming loss of quiet enjoyment for the equivalent of one month's rent plus \$43.10 related to expenses incurred to file this application as well as the \$100.00 filing fee.

The tenant is claiming that starting last year he started to experience issues with pigeons outside his rental unit. The tenant claims the noise from the pigeons disrupts his sleep and reading activities. The tenant submits the problem did seem to wane at first but then got worse. The tenant submits he first complained to the landlord on January 21, 2019. The tenant submits he then sent a letter to the landlord on February 21, 2019. After this he received a response from the building manger that they would be installing spikes on the balconies above his unit but would have to wait until the weather got better. The tenant submits he was still waiting for action to be taken when he filed his complaint on March 15, 2019.

The landlord submits that there is a city wide issue with pigeons. There was a previous tenant who used to feed the pigeons but that tenant has since moved. The landlord submits they have taken proactive steps to deal with the issue including the following:

- One year ago they sent a notice to all tenants to not feed pigeons.
- One year ago the landlord installed a sonic repellant device on the roof of the building.
- They also sent a memo to all tenants to keep balconies clear of clutter to prevent nesting etc.
- The landlord hired pest control who advised that they would need to wait for warmer weather to install spikes so the glue could dry properly.
- In February and March 2019 the landlord installed spikes on all the balconies above the tenants unit.
- In March 2019 the landlord took the further step of installing a net on one of the balconies above the tenant's unit where it was reported pigeons were landing.

The landlord submits that since the net was installed on the unit above the issue has been rectified.

Analysis

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline #6 "Entitlement to Quiet Enjoyment" provides the following guidance:

In order to prove a breach of the entitlement to quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the rental premises. This includes situations in which the landlord has directly caused the interference or was aware of the interference but failed to take reasonable steps to correct it. It is also necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. Temporary discomfort or inconvenience does not constitute a basis for a breach under this section. In determining the amount by which the value of the tenancy has been reduced, consideration will be given to the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation existed.

I find the landlord has taken appropriate measures to address the tenant's concern about pigeons in a reasonable manner prior to and following the issue first being formally reported to the landlord by the tenant. I accept the landlord's testimony that installing the spikes required waiting for warmer weather. Further, I find that the tenant has provided insufficient evidence to support there has been a substantial interference with the ordinary and lawful enjoyment of his rental unit. I find that if anything he experienced a temporary discomfort or inconvenience.

The tenant's application for monetary compensation is dismissed without leave to reapply.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee or any other fees incurred in filing this application.

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: May 07, 2019

Residential Tenancy Branch