



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT
 MNDCL FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. Each party has applied for a monetary order as against the other party for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for recovery of the filing fees for the cost of the applications.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for carpet cleaning, suite cleaning, suite painting, scratched glasses, loss of quiet enjoyment, and other expenses?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?

Background and Evidence

The parties agree to the following facts:

- The tenancy began on December 30, 2017 on a month-to-month basis;

- The tenancy ended on November 30, 2018;
- A written tenancy agreement specifies rent in the amount of \$750.00 per month payable on the 1st day of each month;
- There are no rental arrears;
- The landlord has returned to the tenant the entire \$350.00 security deposit;
- No move-in or move-out condition inspection reports were completed by either party.
- The rental unit is one of 2 basement suites, both tenanted;
- The upper level of the home was vacant until tenants moved in effective April 1, 2018.

The tenant testified that when she moved in the carpet was not clean, and the tenant claims \$24.06 for the cost of carpet shampoo. A receipt has been provided for this hearing. The rental unit needed cleaning as well and the landlord told the tenant to do it, for which the tenant claims \$300.00.

The tenant also testified that she told the landlord that the rental unit needed painting, and the landlord agreed to buy the supplies. The parties didn't talk about payment, however the tenant completed the painting and claims \$250.00 from the landlord.

During the tenancy the tenant pulled a hook which was for holding a picture or something from the wall and it hit the tenant's glasses and scratched them. Had the landlord properly maintained the rental unit, the glasses would not be scratched. The tenant claims \$225.00 for glasses. A copy of a receipt has been provided showing a cost of \$399.00 for lenses and \$199.00 for frames, for a total of \$599.98.

The tenant also claims half of the rent paid due to disturbances during the tenancy. The people in the upper unit were very noisy, especially at night, turning on loud music or television, having parties and fights. The first day they moved in the tenant knocked on the ceiling because they were too noisy. The tenant called police on several occasions and the tenant has provided copies of police reports. The police would talk to the tenants upstairs and settle them down. The tenant also sent the landlord 3 notices about disturbances, and copies have been provided for this hearing. The landlord did not make a serious effort to deal with the tenants upstairs. The tenant has also provided numerous photographs, text messages and audio recordings as evidence for this hearing.

The tenant also testified that the parties had been to dispute resolution during the tenancy and the tenant was unsuccessful with an application for a Review Hearing,

however the tenant claims the cost of that application amounting to \$50.00 and recovery of the \$100.00 filing fee for this application.

The tenant has provided a Monetary Order Worksheet setting out the following claims:

- \$13.76 + \$9.00 for mail delivery;
- \$24.06 for carpet cleaning;
- \$100.00 + \$50.00 for the filing fees; and
- \$225.00 for glasses.

The tenant's Application for Dispute Resolution specifies the following claims:

- \$300.00 for cleaning;
- \$250.00 for painting;
- \$4,125.00 for disturbances;
- \$225.00 for glasses;
- no particular amount for unrepaired items;
- For a total of \$6,000.00.

The landlord testified that she agreed to pay the tenant for carpet shampoo, but the tenant had some and was going to use it. The tenant wanted an agreement that she be permitted to clean at the beginning of the tenancy because she was particular about it, and then the tenant would not have to clean at move-out. However, the tenant did clean at move-out.

The tenant wanted to paint and the landlord said she would buy the paint and brushes if the tenant wanted certain colors to make the rental unit comfortable for herself. There was no discussion about paying the tenant to do it, nor did the tenant ever ask the landlord to paint the rental unit or pay the tenant to paint.

The landlord has reviewed the police reports provided for this hearing by the tenant and testified that the landlord was never contacted on any of the occasions by the tenant, the other tenants or the police, and the police reports say there was no sign of parties or domestic disputes. The landlord also talked to the tenant upstairs and asked them to move their television to a different area so as to not bother the tenant in the basement suite. The other tenant in the other basement suite still resides there and told the landlord that the noise from upstairs was just family noise. There was no noise of parties or fights or domestic disputes. The tenants upstairs had 3 kids, and each time the police were called, the police would take the kids away from parents to ensure no domestic abuse as alleged by the tenant. It was getting out of control. The tenants in

the upper level moved out earlier than their fixed term as a result, and didn't pay rent for half of December or any rent for January or February due to the stress caused by this tenant.

The landlord has not re-rented the rental unit or the upstairs unit, but the other basement is still rented by the long-term tenant. The landlord tried her best to satisfy all tenants, but it has been very hard.

As a result of the stress caused by the tenant toward the tenants in the upper level of the rental home who broke their lease, the landlord claims \$2,200.00 per month for 5 months for loss of rental revenue for the upper level, and \$750.00 per month for 6 months rental loss for the tenant's rental unit, for a total of \$15,500.00 from the tenant. The landlord is too afraid to re-rent.

Analysis

Where a party makes a monetary claim for damages as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

I have reviewed all of the evidentiary material, and firstly considering the tenant's claim for carpet cleaning and cleaning, a landlord is required to provide a rental unit reasonably clean at the beginning of the tenancy. The *Act* also states that move-in and move-out condition inspection reports are evidence of the condition of the rental unit. The landlord testified that the tenant wanted to clean at move-in because she was very particular. In the absence of any reports, I am not satisfied that the rental unit wasn't reasonably clean at the beginning of the tenancy. I find that the tenant has failed to establish any of the elements in the test for damages.

With respect to glasses, I am not satisfied that the landlord failed to maintain a picture hook that the tenant pulled on causing scratches on her glasses, and I dismiss the claim.

There is no evidence that the parties ever came to any agreement or even had a discussion about the tenant being paid to paint the rental unit. The tenant testified that

previous tenants had been there for 15 years, but gave no evidence about asking the landlord to paint. I find that the tenant has failed to establish any of the elements in the test for damages for painting.

The *Residential Tenancy Act* provides for recovery of a filing fee if a party is successful with an Application for Dispute Resolution, but not for the cost of serving documents or preparing for a hearing. Therefore, I dismiss the tenant's claims for mail delivery and the \$50.00 filing fee for the unsuccessful Review Application.

With respect to the tenant's claim for monetary compensation for loss of quiet enjoyment, I have listened to all of the audio recordings, and I accept that the tenant complained in writing to the landlord on 3 occasions. Although it is clear that there is little sound-proofing between the floors, I agree that all of the noises are "family noises," and none are disturbing. There are no noises of parties, fights or domestic disputes other than the children perhaps quarrelling. The recordings have been dated by the tenant and I have compared them to the police reports and only one date corresponds. I am very satisfied that the tenant has exaggerated the claim to a great extent. I am not satisfied that the tenant has established that the landlord failed to comply with the *Act* or the tenancy agreement and I dismiss the tenant's claim for loss of quiet enjoyment.

In short, I find the tenant's claim to be entirely frivolous and without merit.

Since the tenant has not been successful with the application the tenant is not entitled to recovery of the filing fee.

With respect to the landlord's claim for loss of rental revenue for the tenants in the upper level moving out earlier than the end of their fixed term, the *Act* requires tenants to pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement, so the landlord could have required them to pay. However, in comparing the noises in the audio recordings to the police reports, I find that the stress the tenant caused to the tenants in the upper unit by repeatedly making allegations of domestic disputes, parties and fights was not warranted, causing them to move out early, and that any attempt by the landlord to force them to pay the rent could not be justified. In the circumstances I find that the landlord has established a claim of \$2,200.00 per month for 2.5 months, or \$5,500.00 for loss of rental revenue.

I accept that the landlord is hesitant or even afraid to re-rent, however I am not satisfied that the landlord has established that she could not re-rent either unit as a result of the tenant's behaviours, or any other loss of rental revenue.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlord in the amount of \$5,600.00.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,600.00.

This order is final and binding and may be enforced.

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 18, 2019

Residential Tenancy Branch