



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THIRD ESTATES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

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.

The hearing was a reconvened hearing from previous hearings held on April 30, 2019 and June 17, 2019.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act?

Background and Evidence

The tenancy started in November 2005. The rent was initially \$850.00 and the tenant paid a \$425.00 security deposit. The tenancy agreement included water, heat, stove and oven, refrigerator and window coverings. The rental unit was an apartment in a multi-unit apartment building.

The tenant complained of multiple noise disturbances during her tenancy. She testified that the building fire alarm went off multiple times between 2007 to 2010. In addition, the

tenant complained that an occupant in an apartment above her made loud noises which sounded like a chair being dragged in 2012.

The tenant complained that the smoke detector in her suite initially did not function because it was not wired in. The tenant testified that her alarm was fixed in 2010.

The tenant complained that an audible tone began being emitted from within the building on March 25, 2016. The tenant testified that this sound was very disturbing.

The tenant claimed that as a result of the sound she was unable to get adequate sleep. The tenant testified that the fatigue caused by her lack of sleep caused her to trip and fall while disembarking a bus and she sustained a fractured leg. The tenant claims that these personal injuries were caused by her exposure to the noxious sound.

The tenant complained to the police about the sound and they advised her to have the electric utility company check the electrical unit which was located near the tenant's rental unit. The electric utility company checked the electrical unit and they did not find any problems with the electrical unit.

The tenant testified that the sound stopped on July 8, 2016.

The tenant complained that her rental unit became infested with mice in June 2016. She testified that she pulled the stove away from the wall on February 25, 2017 and she found a hole in the wall. The tenant testified that mice were entering her apartment through this hole. The tenant claimed that someone intentionally made this hole to give mice access to her rental unit. The tenant also testified that the landlord poured syrup in her cabinets to attract mice.

The tenant also testified that she had ongoing problems with bed bugs and pharaoh ants. She testified that she complained about these pests in 2010. The tenant provided a photograph on ants on a countertop. The tenant testified that the landlord sent pest control to the building twice but the pest control was not effective until appropriate pest bait was used.

The tenant also complained of heating problems in the rental unit. A previous Residential Tenancy Branch hearing was held regarding the heating in the rental unit. The file number for the previous hearing is referenced on the first page of this decision. In the previous hearing, an order was issued on July 15, 2015 granting monetary compensation to the tenant for the loss of heating facilities. In addition, the landlord was ordered to have the heating system repaired. Further, the tenant was granted a rent

reduction of \$20.00 each month, starting in August 2019, until the heating system was repaired. The landlord eventually replaced the heating system in the building.

The tenant also claimed that the landlord had entered her rental unit on multiple occasions and moved items and tampered with her lock.

In addition, the tenant complained that the laundry service was not functional during her tenancy and she had to incur inconvenience and monetary expense by laundering her clothes elsewhere.

The tenant also complained that the building locks were changed and she was not provided keys even though she requested keys multiple times. The tenant stated that she was forced to walk around the building to a different entrance.

The tenant also complained that other residents in the building would prop open the building door which jeopardized the tenants' security.

The tenant has claimed a monetary order for "...Good Faith Requirement when ending tenancy. 2 month compensation." The landlord issued a 2 Month Notice to End Tenancy for Landlord's of Property Use on October 26, 2016. The stated reason for ending the tenancy so that the landlord, or the landlord's close family, could occupy the rental unit. The tenant disputed the notice to end tenancy. The file number for the previous hearing is referenced on the first page of this decision.

The tenant's application to cancel the notice to end tenancy was dismissed and the landlord was granted an order of possession effective on January 31, 2017. The tenant moved out of the rental unit on February 26, 2017. The tenant did not provide any evidence as to whether or not the landlord complied with its stated intention to occupy the rental unit as set forth on the notice to end tenancy.

The tenant claimed compensation for moving and storage expenses in regarding to the landlord ending the tenancy.

The tenant also claimed compensation for a motor vehicle insurance claim in regards to motor vehicle damage from an accident on July 23, 2017, which is after the tenancy ended. The tenant claimed \$2,500.00 for reimbursement of the motor vehicle insurance claim.

The tenant also claimed \$152 for lost work in January and February 2017.

The landlord denied the tenant's allegations. The landlord testified that never entered the tenant's rental unit with the tenant's permission.

Analysis

Section 28 of the *Act* provides that tenants are entitled to quiet enjoyment including the right to freedom from unreasonable disturbance.

Residential Tenancy Branch Policy Guidelines No. 6 discusses the right to compensation for breaching the entitlement to quiet enjoyment:

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the *Act*. 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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I will address each of the tenant's claims separately:

i. Fire alarm disturbances

I find that the tenant has failed to provide sufficient evidence that the fire alarms were the result of a breach of the *Act*, regulations, or tenancy agreement by the landlord as required by section 67 of the *Act*. Furthermore, in the absence of further evidence, I find that occasional fire alarms in a multi-unit building is not necessarily a breach of the tenant's right to quiet enjoyment. I dismiss the tenant's request for compensation regarding the fire alarms.

ii. Noises from occupant above the tenant

Again, I find that the tenant I find that the tenant has failed to provide sufficient evidence to establish that the noise above the tenant was caused by the landlord breaching the *Act*, regulations, or tenancy agreement. Furthermore, I find that occasional noise from another rental unit is not necessarily a breach of the tenant's right to quiet enjoyment. Some noise from neighbouring rental units is normal in a multi-unit building. The right to quiet enjoyment does not entitle a tenant to silence in their rental unit. I dismiss the tenant's request for compensation regarding the noise from the suite above her.

iii. Smoke detector not functioning

I find the that tenant did not sustain any loss from the non-functioning smoke detector as the tenant testified that the alarm was repaired by the landlord. In the absence of a loss, I dismiss the tenant's claim for compensation for the non-functioning smoke detector.

iv. Audible tone noise

I find that the tenant has not provided sufficient evidence to establish that there was noxious tone sound in the rental unit. Although the tenant testified that this noise existed, I do not find this testimony sufficient. The tenant's complaints were not detected by the electric utility company and there was no testimony from other witnesses complaining of this noise. I find that the tenant has failed to satisfy her onus of proving this claim on the balance of probability. Accordingly, I dismiss the tenant's claim for compensation in regards to the audible tone noise.

v. Personal injuries

Since I find that the tenant has not provided sufficient evidence to establish the existence of the noxious audible tone noise, I also dismiss the tenant's claim for

compensation for fatigue and her fractured leg which she claims was caused by the result of exposure to the noise.

vi. Mice

I find that the tenant has failed to provide sufficient evidence to establish her claim that the landlord made a hole for the mice to enter. Also, I find that the tenant has failed to provide sufficient evidence to establish that the landlord poured syrup in her cabinets to attract mice. I find the existence of a hole and syrup does not establish that the landlord was responsible. Further, the tenant did not provide evidence that she reported the mice infestation to the landlord for rodent control service. Accordingly, I dismiss the tenant's claim for mice damages.

vii. Bed bugs and pharaoh ants

I find that the tenant has failed to provide sufficient evidence to establish a claim for compensation for bed bugs and pharaoh ant infestations. The tenant testified that these infestations were disturbing but the landlord testified that the building provided timely pest control services to deal with pest problems. These claims occurred nine years ago in 2010. Given this substantial passage of time, it is difficult to now determine whether the pest infestations were handled appropriately or not by the landlord. However, since the tenant has the burden of proof and I find that the tenant has not provided sufficient evidence to satisfy me that the landlord did not handle the pest infestation properly, I dismiss the tenant's application for compensation for the bed bugs and pharaoh ant infestations.

viii. Heating

The issue of the heating problems was already resolved in the previous Residential Tenancy Branch Hearing. The tenant was given monetary compensation for past heating problems and she was given a rent reduction for future heating problems. Accordingly, I find that the tenant's heating complaints have already been adjudicated by the Residential Tenancy Branch and I dismiss the tenant's application for compensation for heating problems herein.

ix. Unauthorized entry

I find that the tenant has not provided sufficient evidence to establish that the landlord has entered her rental unit without her authorization or tampered with her locks. Accordingly, I dismiss the tenant's claim for compensation unauthorized entry.

x. Laundry

I find that the tenant has not provided sufficient evidence to establish that laundry facilities were included in the tenancy agreement. The tenancy agreement did not state that laundry facilities were included and the tenant did not provide any evidence to provide that laundry facilities were included in the tenancy agreement. Accordingly, I find that the tenant has failed to prove that the landlord breached the Act by failing to repair the laundry facilities. Accordingly, I dismiss the tenant's claim for compensation regarding the laundry facilities.

xi. Keys

I find that the tenant has not provided sufficient evidence that she did not have keys to her building. The tenant provided as evidence a photograph of an envelope which stated that it included the building keys from the landlord. Further, the tenant did not provide testimony as to when the keys were changed or how long she was deprived access to the building. I find that the tenant has failed to prove this claim and, accordingly, I dismiss the tenant's request for compensation regarding the keys.

xii. Building security

I find that the tenant has not provided sufficient evidence to establish that a locked building door was required in the tenancy agreement. Accordingly, I find that the tenant has failed to prove that the landlord breached the Act by other occupants propping the building door open. Accordingly, I dismiss the tenant's claim for regarding the building door being propped open.

xiii. Ending of tenancy

I dismiss the tenant's request for compensation in regards to the end of the tenancy. The tenant is challenging the issuance of the notice to end tenancy as not being in good faith. However, this matter was already adjudicated in a previous Residential Tenancy Branch hearing wherein the tenant disputed the notice to end tenancy. In the previous hearing, the tenant's application to cancel the notice to end tenancy was cancelled and

the notice to end tenancy was upheld. As such, the notice to end tenancy has already been held to have been issued in good faith and this finding will not be re-litigated.

After a notice to end tenancy has been upheld, a tenant can bring a subsequent claim pursuant to section 51 of the *Act* for the landlord failing to comply with its stated intention to occupy the rental unit as stated on the tenancy agreement. However, even if the tenant's application is interpreted as a claim under section 51, the claim still fails because the tenant has not provided any evidence to prove that the landlord did not occupy the rental unit as the landlord stated that it intended to when it issued the notice to end tenancy. In the absence of such evidence, the tenant has failed to establish a claim pursuant to section 51 and this claim is dismissed.

Accordingly, I dismiss the tenant's claim for moving and storage costs based on an allegation that the landlord did not end the tenancy in good faith.

ix. Motor vehicle insurance reimbursement claim

I find that the tenant I find that the tenant has failed to provide sufficient evidence to establish that a motor vehicle accident which happened five months after the tenancy ended was caused by the landlord breaching the *Act*, regulations, or tenancy agreement. Accordingly, the tenant's claim for reimbursement of the motor vehicle insurance claim is denied.

x. Loss of work

I find that the tenant has failed to provide sufficient evidence to establish that her loss of work was caused by by the landlord breaching the *Act*, regulations, or tenancy agreement. Accordingly, the tenant's claim for loss of work is denied.

xi. Filing fee

Since the tenant has not been successful in this matter, I dismiss the tenant's application for reimbursement of the filing fee pursuant to section 72(1) of the *Act*.

Conclusion

The tenant's application is dismissed.

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: August 18, 2019