



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF / MNDC MNSD

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the respective applications and evidence submissions.

Issues

Is the landlord entitled to a monetary award for loss of rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

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

Is the tenant entitled to return of all or a portion of the security deposit pursuant to section 38?

Background and Evidence

The rental unit was the main floor of a duplex property. The tenancy began on November 1, 2018 and ended on May 31, 2019. The lease was for a one-year fixed term which was not scheduled to expire until October 31, 2019. The monthly rent was \$975.00 payable on the 1st day of each month. The monthly rent paid by the tenant was a discounted rate which was negotiated and agreed to by the parties at the beginning of the lease due to anticipated construction on the property beginning April 2019. A security deposit of \$475.00 was paid at the start of the tenancy which the landlord continues to retain. The tenant provided a forwarding address to the landlord on July 4, 2019. The landlord's application to retain the deposit was filed on July 11, 2019 within the 15 day time limit provided for in section 38 of the Act.

On May 29, 2019 the tenant provided 48 hours notice to vacate the rental unit.

The landlord is claiming \$475.00 as loss of rent for the month of June 2019. The landlord testified that the tenant provided only 48-hours' notice before vacating the unit on May 31, 2019. The landlord testified they were unable to re-rent the unit July 1, 2019. The landlord submits they are claiming only ½ months' rent even though they lost a full month. The landlord submits the tenant advertised the unit by giving inaccurate information without the landlord's permission.

The tenant acknowledged only providing 48 hours' notice and submits her boundaries were pushed by the landlord and issues with the construction workers on site was the final straw. The tenant testified that she advertised the unit and the landlord did not mitigate losses by following up on her leads. The tenant submits she found someone willing to move-in June 1, 2019 and the landlord did end up renting to this person but chose not to do so until July 1, 2019.

The landlord testified that the new tenant did not wish to move in June 1, 2019 but rather July 1, 2019 as she was receiving one months free rent from her current landlord. The landlord testified that they agreed to this as they did not have sufficient time to find another suitable tenant for June 1, 2019.

In her own application, the tenant is claiming \$950.00 for loss of quiet enjoyment and return of her security deposit. The tenant submits that she was forced to move due to

the landlord breaching her right to quiet enjoyment. The tenant submits that although the construction was anticipated she did not anticipate the extent to which her privacy was breached. The tenant submits the construction workers were constantly outside her door, on her deck and smoking near open windows. The tenant testified the construction workers would use the main entrance doors to enter the house in early morning hours, walk up and down the stairs in their heavy boots and slam doors as they exited.

The tenant submits the landlord D.R. was also constantly overstepping and interfering with her right to quiet enjoyment. The tenant testified that D.R. was using her porch space to work on her own projects and moving her furniture on the porch. The tenant submits this impacted her ability to enter and exit the house, open windows and quiet enjoyment due to noise created by power tools. The tenant submits that D.R. was constantly contacting her in regard to contractors coming on the property.

In response to the tenant's claims, the landlord submits that the tenant was provided very detailed and explicit information in respect to the anticipated construction from the outset. The landlord submits the monthly rent was negotiated with the tenant based upon the anticipated construction. The landlord submits that they were only trying to give the tenant a heads up when contacting her about contractors coming on the property and now the tenant is claiming it was an invasion of privacy.

The landlord submits the duplex has a common main entrance which the construction workers needed to access the electric panel in the basement unit. The landlord testified the construction workers never started before 7:00 a.m. The landlord testified that the rental unit is on a double lot and they were constructing a separate garage suite which did not involve any construction on the rental unit. The landlord testified the construction work began at the end of April 2019 after which there was a two week break and it began again mid-May 2019.

In reply, the tenant submits that most of her concerns were not about the construction but rather the landlord's breach of her quiet enjoyment. The tenant submits it was an accumulation of little things all the time.

The landlord D.R. replied that she was doing a project on the front porch, but she notified the tenant in the mornings before doing so.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

Residential Tenancy Policy Guideline #8, Unconscionable and Material Terms, provides the following guidance:

In order to end a tenancy for a breach of a material term, the party alleging the breach must inform the other party in writing of the following:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I find the tenant failed to notify the landlord in writing of any alleged breach; failed to provide the landlord with a reasonable opportunity, with a fixed deadline, to correct the alleged breach; and failed to notify the landlord that they would end the tenancy if the problem was not fixed by the stated deadline.

I find the tenant ended the fixed term lease before the date specified in the agreement and was therefore non-compliant with the Act and the agreement. I find the landlord mitigated their losses by finding a tenant as soon as possible given the tenant only provided 48 hours' notice. The tenant was not at liberty to advertise and/or sublet the unit as there were less than six months remaining in her lease. In either event, I accept the landlord's testimony and evidence and find that the replacement tenant was not able to start her tenancy until July 1, 2019.

I accept the landlords claim for loss of rent in the amount of \$475.00 for the month of June 2019.

As the landlord was successful in his application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for his application for a total award of \$575.00.

I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. The landlord is granted a monetary order for the balance of \$100.00.

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.

I find the tenant has provided insufficient evidence either by way of oral testimony or written submissions to support a finding that there has been substantial interference with her ordinary and lawful enjoyment of the rental premises. In regard to the complaints about the construction, I find the tenant was well aware of the anticipated construction prior to entering into the tenancy agreement and negotiated the monthly rent based upon this. The tenant also provided no evidence in respect to her claims about the work starting before 7:00 a.m. I find the work was for the most part off the rental premises except for the workers using the common entrance to access the electric panel. In regard to the tenant's complaints about the landlord D.R., I find the tenant had failed to demonstrate substantial interference with her ordinary and lawful

enjoyment of the premises. I find there may have been temporary discomfort or minor inconvenience from the landlord working on a project on the front porch but the tenant has not demonstrated that this or any of her other complaints were so substantial that she suffered a loss or how she valued the alleged loss to be the equivalent of one month's rent.

I find the tenant has not established that the landlord failed to comply with the Act, the regulations or the tenancy agreement. The tenant is not entitled to return of her security deposit as the landlord is permitted to apply it to the monetary amount awarded above.

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

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00. Should the tenant 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: November 16, 2019

Residential Tenancy Branch