



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNDC FF

Introduction

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

- 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 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 provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the tenant's application and evidence submissions. The landlord did not submit any evidence package in response to the application.

At the outset of the hearing, the landlord questioned why this hearing was necessary as the parties had already been through a hearing on a related dispute. It was explained to the landlord that the hearing was scheduled in response to a new application initiated by the tenants. The landlord initially threatened to leave the conference call as he had to "get back to work" but remained on the line after it was explained to the landlord that a decision would be issued based solely on the testimony and evidence presented by the tenants. The landlord initially remained on the line; however, at 1:55 p.m. the landlord abruptly exited the conference call without warning while the tenants were still presenting their case. The hearing continued in the absence of the landlord and concluded at 2:00 p.m. at which time the landlord had not reconnected to the conference.

Issues

Are the tenants entitled to compensation for removal of a service or facility and loss of quiet enjoyment?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy for this basement suite began on April 2018 and ended on May 31, 2019. The monthly rent was \$1300.00 payable on the 1st of each month.

In a previous decision dated May 7, 2019, an Arbitrator made the following findings and awards:

- A finding that the landlord violated section 27 of the Act by withdrawing laundry service from December 7, 2018 and cable and internet services from December 28, 2018.
- A finding that the tenant was entitled to \$85.00 per month plus tax for cable services for the period of January to end of March 2019.
- A finding that the tenants were entitled to recover \$464.50 for loss of laundry services for the same three-month period as per above.
- A finding that the tenant's share of hydro bills was 40% and not 50% as claimed by the landlord.
- A finding that the landlord violated section 28 of the Act by allowing his kids to play drums which effected the tenants right to quiet enjoyment. The tenants were awarded a 3% rent reduction for the period of December to March 2019.

The tenants testified that the landlord failed to restore the laundry and cable services after the May 7, 2019 decision. The tenants are seeking compensation for continued loss for the removal of these service for the months of April 2019 and May 2019. The tenants are also claiming 10% reduction of rent for each of the months of April and May 2019. The tenants testified that the landlord continued disturbing their quiet enjoyment by purposely playing drums and stomping on the floors above them even after receiving the previous decision. The tenants submitted a series of text messages by which they kept a track of all the stomping and drum playing.

The tenants are also seeking reimbursement of late fees in the amount of \$6.35 paid for hydro bills. The tenants claim that the late fee was charged as the landlord did not pay his share on time so the tenants should not be responsible for such.

Analysis

Section 27 of the Act provides as follows:

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

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.

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.

I find the tenants have established that they suffered a loss as a result of the landlord terminating cable/internet and laundry services as was found in the previous decision. The landlord did not reinstate these services; therefore, the tenants continued to suffer a loss for the last 2 months of the tenancy. I accept the tenants claims as submitted and the award the tenants \$283.50 for loss of laundry and \$186.90 for loss of cable and internet. I find the amounts claimed by the tenants for laundry to be reasonable and consistent with the award of the previous decision. The tenants submitted receipts for the cable/internet expenses incurred.

I find the landlord not only continued to disrupt the tenant's quiet enjoyment by the playing of drums and stomping on the floors above but did so purposefully and continued to do so after the previous decision. I find the tenants claim for a 10% reduction in the rent to be reasonable and warranted. The tenants are awarded \$260.00 for loss of quiet enjoyment as claimed.

I find the tenants are entitled to a reimbursement of \$6.35 for late fees charged and paid to the landlord as the tenants were not responsible for these charges.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord.

The tenants are awarded a total of \$836.75.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$836.75. 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: February 03, 2020

Residential Tenancy Branch