



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On March 14, 2020, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant K.R. attended the hearing. The Landlord attended the hearing with W.S. attending as an agent for the Landlord. All parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on March 25, 2020 to the rental unit address because the Landlord did not provide an address for service on the tenancy agreement. She stated that the Landlord received mail at the rental unit during the tenancy. She also stated that she emailed the Landlord to advise him that the Notice of Hearing and evidence package was sent to that address. W.S. went to the rental unit to retrieve this package and he confirmed that the Landlord received it. He stated that he had reviewed this package, that he was prepared to respond to it, and that there was no prejudice to the Landlord in proceeding with the hearing. While the Notice of Hearing and evidence package was not served accordance with Sections 89 and 90 of the *Act*, as the Landlord is prepared to proceed, I am satisfied that the Landlord was served with the Notice of Hearing evidence package.

W.S. advised that he served the Landlord’s evidence to the Tenants by registered mail on April 14, 2020 and the Tenant confirmed that she received this package. As well, she stated that she had reviewed this evidence and was prepared to respond to it. As such, I have accepted this evidence and will consider it when rendering this decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

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

All parties agreed that the tenancy started on June 1, 2019 and ended when the Tenants gave up vacant possession of the rental unit on or around November 23, 2019. Rent was established in the amount of \$2,400.00 per month and was due on the first day of each month. A security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00 were also paid, and these were returned at the end of the tenancy. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenant referred to the timeline of events that was submitted as documentary evidence. In that document it was noted that there was initial dissatisfaction with their ability to use the yard. In July 2019, the downstairs tenants began putting loose garbage in the Tenants' garbage and they spoke with them about this. The Tenants then moved their garbage bins to another location and the downstairs tenants would just put their own garbage bags in front of their own door, which would then be opened up by animals. They asked the downstairs tenants to address this issue and clean up the garbage that was strewn across the property, but those tenants would not. The Tenants advised the Landlord of this and the Landlord would occasionally clean this up but took no further action. On August 26, 2019, there was a large amount of the downstairs tenants' garbage strewn across the yard and the Landlord was again informed that the situation was worsening. In addition, marijuana smoke began to emanate into the rental unit from the downstairs tenants' unit, and the Tenants spoke to the Landlord about this issue as well.

From July to November 8, 2019, the Tenants would note many people visiting and leaving the downstairs unit and these visitors would often only stay for a few minutes. Cars would be parked blocking the driveway and people could be seen carrying large, empty bags into that unit and leaving with full bags. They noted that there appeared to be a person standing watch to signal when it was safe for these people to come in and out of that unit. The Tenants believed that there may have been a drug operation being conducted and they feared for their safety. They advised the Landlord of this several times and the Landlord assured them that he would deal with their concerns; however, no action appeared to have been taken. They stated that the neighbours also raised concerns to them about the questionable activities observed.

From August 5 to mid September 2019, a large uninsured boat was parked in front of the house and the people working on it would often go in and out of the downstairs unit. This large boat obstructed the neighbours as well, and a bylaw officer inquired about it in mid August 2019. The bylaw officer's visit and the Tenants' dissatisfaction of the boat and foot traffic were all communicated to the Landlord again.

They submitted that in early October 2019, the Landlord conducted the only inspection of the downstairs unit and took no further action. However, the Landlord did serve the downstairs tenants with an eviction notice in late October 2019. For the next approximately two weeks, the odour of marijuana smoke increased as did the frequency of visitors to the downstairs unit. On November 7, 2019, the Tenants made the decision to move out of the rental unit out of concern for their own safety, and they emailed the Landlord of this. Upon moving some of their property, they speculated that the downstairs tenants may have recently urinated on a trampoline that they owned.

On November 17, 2019, the Landlord met the Tenants to do an inspection and they conversed about the issues with the downstairs tenants. The Tenants submitted that the Landlord acknowledged that the downstairs tenants were likely trafficking drugs, that he acknowledged the garbage issue and that the yard was not suitable for use, that he confirmed that he smelled marijuana smoke as well, and that he apologized for this situation.

The Tenant advised that they had a good relationship with the Landlord and they never addressed many of their issues in writing, but either had a conversation with the Landlord or texted him. She stated that the Landlord exhibited a relaxed manner with which he dealt with issues, and that he did not address the Tenants' concerns in a timely or professional manner. She referenced emails submitted as documentary evidence from neighbours which confirmed that he was aware of the ongoing issues, but he had a relaxed attitude in dealing with them. She confirmed that when they advised the Landlord of an issue, they would not get any response and would have to frequently prod him for a reply. She stated that they did not have much evidence to document the issues, but the garbage strewn around the yard was an every day occurrence.

The Tenant advised that they were seeking compensation in the amount of **\$4,000.00** due to a loss of their quiet enjoyment of the rental unit from the outset of the tenancy. They did not have exclusive use of the backyard, there was the constant garbage issue that was not addressed, there was the strong odour of marijuana smoke present, and they did not feel safe due to the suspected drug activity. It is their position that the Landlord did not take responsibility in dealing with these issues even though he apologized for them occurring. While the Tenants did not address their concerns in writing, they first advised the Landlord of these issues in person or by phone in July 2019 and that they would do so every few weeks. The emails from the neighbours confirms that he would have been first aware of these issues on or around July 2019.

She also indicated that they attempted to address their concerns with the downstairs tenants, with no success.

W.S. referenced an evidence package that he submitted on behalf of the Landlord and it is his position that the Tenants purchased their own home, and they fabricated these allegations to break the fixed term tenancy early. He stated that the Landlord inspected the downstairs rental unit on October 2, 2019 and found no issues in the unit. On October 18, 2019 the Landlord received a phone call from the Tenants about bags of garbage that were left outside the doorway and the Landlord called these tenants on October 21, 2019 to have this issue rectified. On October 27, 2019, the Landlord served the downstairs tenants with a notice to end their tenancy due to repeated late payment of rent and he was contacted that same day by a neighbour complaining about these tenants being a nuisance. On November 7, 2019, the Tenants emailed the Landlord a list of complaints with respect to the downstairs tenants.

He submitted that the Landlord never gave the Tenants exclusive use of the yard and the Landlord was never advised of the garbage issue "at any point during the tenancy" until a phone call on October 19, 2019. Moreover, the Tenants did not submit much evidence to support their position on the garbage problem. With respect to the marijuana smoke, the Tenants only reported this issue in an email on November 7, 2019 but there was no odour of this smoke present during his inspection on October 2, 2019. In addition, he stated that the house was brand new, without ducting, and was constructed with 5/8" drywall and insulation, so there could not be any transference of odours between units. However, he later noted that the transference of smells between units "probably isn't possible." Regarding the foot traffic observed by the Tenants, he stated that the Landlord was not made aware of any of these issues at any point, he questioned why the Tenants would not contact the police, and he cited a lack of evidence submitted to support their allegations. As well, no neighbours had contacted the Landlord about any suspicious traffic around the property.

With respect to the boat on the street, he stated that the Tenants did not inform the Landlord of this, nor was he contacted by a bylaw officer. He only saw this boat when he visited the property and it was removed a few days after he spoke with the downstairs tenants. In addition, he refuted that the Landlord ever admitted that the downstairs unit was a drug operation. W.S. submitted copies of texts between the Tenants and the Landlord to support the Landlord's position. Included in this evidence package was an email from W.S. to the Landlord offering his opinion that the Tenants are not entitled to the covenant of quiet enjoyment under Section 28 of the *Act* as they claim, nor is the Landlord responsible for ensuring that this right is maintained for his tenants. It is his belief that the Tenants ended the tenancy because they purchased their own property and are now trying to "extort" the Landlord for compensation "where there is no basis in law."

During the hearing, W.S. echoed much of the same content contained within his documentary evidence. He reiterated that the Landlord was only aware of most issues on November 7, 2019 and there is little evidence to support the Tenants' allegations. He stated that the Landlord was often at the property and he did not observe any of the Tenants' claims. In reference to the email of the neighbour, he noted that this email was dated December 10, 2019, after the Tenants had moved out and the same applies to the text messages that the Tenants make reference to.

The Landlord advised that he is a relaxed person but that does not mean that he is not "handling issues behind the scenes." He confirmed that he received a text from the Tenants on October 14, 2019 and he dealt with that issue five days later. He acknowledged that he served the downstairs tenants a notice to end their tenancy on October 27, 2019 and that "every few days [he] handled handled handled" problems. He stated that he received notification that the downstairs tenants were smoking on October 2, 2019 and he looked into this issue, but there was no evidence that the downstairs tenants ever smoked. He stated that he went to the property every few weeks and he only observed garbage on October 14, 2019. He advised that he had a conversation with the Tenants on September 29, 2019 about the concerns of the traffic going in and out of the downstairs unit, and he investigated the issue "behind the scenes." He also stated that he conducted an inspection in mid-September 2019; however, this was contradictory to any testimony provided.

The Tenant noted that the text message of October 14, 2019 that W.S. submitted indicated that the message was a follow up to previous issues, so this would support her contention that they had advised the Landlord of issues prior to this date. As well, the Landlord noted in the November 7, 2019 email that he was "sorry about the situation" and it is her position that he would have been shocked if this was the first time he was notified of any issues, not simply sorry. She suggested that due to his passive nature, he did not make efforts to action any behaviours to evict the downstairs tenants for their problems until they were determined to be repeatedly late paying rent, and then he served the notice accordingly.

W.S. submitted that the October 14, 2019 text is not suggestive that the Landlord had been aware of ongoing issues. As well, the Landlord's comment of being sorry in the November 7, 2019 email is not an acknowledgement of any fault.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the Act that are applicable to this situation. My reasons for making this decision are below.

Section 28 of the *Act* outlines the Tenants' right to quiet enjoyment and states that the Tenants are entitled to reasonable privacy and freedom from unreasonable disturbance.

Furthermore, Policy Guideline # 6 explains the covenant of quiet enjoyment and that "A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it."

Section 67 of the *Act* outlines that compensation may be awarded for damage or loss that has resulted from a breach of the *Act*.

Moreover, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Tenants' complaints about unreasonable disturbances from the downstairs tenants, given the contradictory testimony and position of the parties with respect to whether or not the Landlord was advised of these issues, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

On the one hand, I have the Tenants' evidence and testimony that they had informed the Landlord, mostly verbally, about ongoing and developing concerns that they had with the downstairs tenants throughout the tenancy. I also have text messages which seem to indicate that the Landlord had been aware of some issues prior to October 14, 2019, and an email from the Landlord apologizing to the Tenants when they explained that they were moving out due to the ongoing issues. Furthermore, I have before me one email from a neighbour confirming the Tenants' submissions during the six-month tenancy when they occupied the rental unit, as well as stating that he spoke with the Landlord about these issues in July 2019, but the Landlord "was as he usually is, very passive about the situation." I also have before me another email from a different neighbour that seemingly confirmed what the Tenants alleged over the six months of their tenancy.

While the Landlord suggests that the Tenants did not make him aware of many of the issues alleged, I find that the Landlord was seemingly defensive, combative, and on edge during the hearing, and he provided inconsistent and contradictory dates for when he claims to have been informed of issues by the Tenants. Furthermore, his testimony

that he handled issues “behind the scenes” and that he did so “every few days” is more indicative, in my view, that this was an ongoing issue that he had been aware of prior to the inconsistent dates that he provided. Moreover, I give no weight to the submissions made by W.S. that the emails from the neighbours were not corroborative as they were dated in December 2019. Clearly from the evidence, these emails speak to events that happen during the time of tenancy. In addition, when reading the October 14, 2019 text messages submitted by W.S., I find that the “follow up on the tenants downstairs” comment further bolsters the likelihood that the Landlord had been previously advised of past issues. Moreover, I note that with respect to the marijuana transference smell, W.S. stated that due to the new construction of the property, it would not have been possible for any odours to waft to the rental unit; however, he later contradicted this position by stating that it “probably isn’t possible.”

When reviewing the totality of the Landlord’s evidence, I find that these submissions are inconsistent, and they appear to be attempts to mislead or portray a different scenario, that on its face is not compelling when assessed on a balance of probabilities. I find that the doubts created by these submissions cause me to be suspicious of the reliability and the truthfulness of these submissions put forward by W.S. and the Landlord. As such, I find that I am dubious of their credibility on the whole.

Consequently, I prefer the Tenants’ evidence that they, more likely than not, had made the Landlord aware that there were ongoing issues during the tenancy. Furthermore, I am satisfied that the more persuasive evidence is that when informed of these issues, the Landlord did little to investigate or address them with the downstairs tenants.

As I am satisfied that there has been a breach of the *Act* and that the Tenants have suffered from a loss of quiet enjoyment, I am satisfied that the Tenants should be compensated accordingly. However, based on the Tenants’ evidence submitted, I am not satisfied that they have corroborated a loss that is equivalent to the amount that they have claimed for. When reviewing the totality of their evidence before me, I find that the Tenants have only corroborated a cumulative loss calculated in the amount of 10% of the monthly rent for approximately five months that these issues had been ongoing. As such, I find that the Tenants should be granted a monetary award in the amount of **\$1,200.00** for their loss.

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.

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$1,300.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. 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: April 23, 2020

Residential Tenancy Branch