



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FFL

Introduction

On June 4, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for money owed or compensation for damage or loss; to keep the security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing at 9:30 a.m. on this date. The Landlord’s agent (“the Landlord”) and Tenant attended the teleconference hearing.

The Landlord and Tenant were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties confirmed that they exchanged the documentary evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?
- Is the Landlord entitled to keep the security deposit towards the claims?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on September 1, 2017 as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,972.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$925.00. The Landlord

provided a copy of the tenancy agreement and a form K Notice of Tenant Responsibilities document. The Landlord stated that the tenancy agreement contains clauses under section 2 regarding noise and breaches on the part of the Tenant. The Landlord submitted that the form K document provides that the Tenant is responsible for any contraventions of bylaws or rules, including penalties or fines.

The Landlord testified that the Tenant violated strata bylaws due to excessive noise during her tenancy. The Landlord submitted that there were incidents of excessive noise described as grinding metal or clanging metal on the following dates:

- October 16, 2017 warning letter sent with warning of possible \$200.00 fine.
- October 16; 17;18; 19, 2017; letter sent October 23, 2017 regarding excessive noise with warning of possible \$200.00 fine
- October 20, 2017; letter sent October 25, 2017 with possible \$200.00 fine.
- October 22, 2017; letter sent October 30 with possible \$200.00 fine.
- November 4, 2017; letter sent November 7, 2017 with possible \$200.00 fine.

The building strata council levied fines amounting to \$1,000.00 against the owner of the rental unit. The strata council later lowered the fines to \$800.00 which the Landlord paid in full by June 18, 2018. The Landlord is seeking to recover the amount of \$800.00 from the Tenant.

The Landlord suggested that a previous property manager sent a copy of each strata letter to the Tenant via email. The Landlord did not provide any documentary evidence to support this. The strata letters requested a response within 14 days and offered an opportunity to attend a strata meeting to dispute the incidents.

The Landlord testified that the Tenant responded to the reported incidents on October 23, 2017.

The Landlord testified that the Tenant attended a strata meeting to dispute the allegation; however, the strata council did not make any change to the fines.

The Landlord testified that the Tenant refused to permit the Landlord to keep the security deposit towards the strata fines, so the Landlord applied for dispute resolution and is seeking to keep the security deposit towards his claim.

In reply, the Tenant testified that she did not breach any bylaws and is not responsible to pay the fines. The Tenant testified that she had the building concierge come up to her floor and verify that the noise was coming from somewhere other than her unit.

The Tenant testified that she never received most of the strata notices because they were addressed to a previous Tenant of the rental unit. The Tenant provided a copy of an email dated November 10, 2017 she sent to the building strata which indicates the noise complaint letters were never received by her because they were addressed to a previous occupant. The Tenant provided a copy of a strata letter she received that is addressed to the previous occupant. She testified that she received only one letter from the strata and she then attended a strata council meeting on November 7, 2017 and was subsequently assessed fines amounting to \$800.00.

The Tenant provided a copy of text message between her and the previous occupant of the rental unit. The Tenant asks the previous occupant if she had any problems regarding noise complaints and the occupant replies that she also received complaints about noise that was not related to her. The previous occupant provided the Tenant with copies the letters she had received from the building strata. The previous occupant suggested that the occupant living above the Tenant and to her side, are on the strata committee and acted together to make the complaints.

The Landlord's evidence includes an email dated November 15, 2017 from the strata council stating that the contact information they have on file is the same as provided on the letters and asked the Landlord if it needs to be changed.

Analysis

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

I find that the Tenant is responsible under the tenancy agreement to pay any fines that are assessed if there are violations of the strata rules.

With respect to whether or not there were violations, I find that there is insufficient evidence from the Landlord to prove that a property manager sent copies of the Bylaw Violation Warning letters to the Tenant via email. The Tenant testified that she never received most of the warning letters from the strata because they named a different occupant. This testimony is supported by the Tenant's documentary evidence as well as the Landlord's documentary evidence.

I find that once the Tenant was notified of the warning letters, she immediately responded to the Landlord and attended a strata council meeting to defend her position that she is not responsible for the noise.

I find that since the Tenant was not informed that there was a problem with noise, she was not aware of a noise concern or any need to make any change to her routine. I note that there is no evidence of any noise complaints made after November 7, 2017.

I also note that while the Bylaw Violation Warning letters describe noise including grinding metal or clanging metal there are no copies of signed and dated written complaints identifying the authors of the complaints. The Tenant's evidence suggests that there is a history of complaints being made against occupants of the unit by some of the neighbors, however there is insufficient evidence before me to identify who in the building was making the noise complaints.

After considering that the Tenant was not properly notified of a noise issue and after considering the Landlord's insufficient evidence of the actual complaints, I find that there is insufficient evidence from the Landlord to prove that the Tenant is responsible for noise violations.

The Landlord's application for money owed or compensation for damage or loss is dismissed without leave to reapply.

With respect to the security deposit, I order the Landlord to return the balance of the security deposit to the Tenant. If the Landlord fails to return the deposit within 15 days of receiving this decision, the Tenant may apply to have the amount of the deposit doubled.

Conclusion

The Landlord's application for money owed or compensation for damage or loss is not successful and is dismissed without leave to reapply.

I order the Landlord to return the balance of the security deposit to the Tenant.

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: June 30, 2020