Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JOHNSEN TREE FARMS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT
MNRL-S, MNDL, FFL

Introduction

This hearing dealt with the adjourned application from the Tenant and the application from the Landlord for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*"). The matter was set for a conference call.

The Tenants' application for Dispute Resolution was made on June 9, 2020. The Tenant applied to recover their personal property and for a monetary order for loss or other money owed. The hearing for the Tenant's application began on July 6, 2020, and was adjourned, and crossed with the Landlord's application, to be completed during today's proceedings.

The Landlord's Application for Dispute Resolution was made on June 18, 2020. The Landlord applied for a monetary order for compensation for damage caused by the Tenant, a monetary order for unpaid rent, and to recover their filing fee.

Four Agents for the Landlord (the "Landlord") and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties agreed that they had exchanged the documentary evidence that I have before me.

I have reviewed all evidence and testimony 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.

Preliminary Matter - *Res Judicata*

During this hearing, it was brought to this Arbitrator's attention that these parties have had two previous Dispute Resolution hearings with the Residential Tenancy Branch. Both parties provided the file numbers for those proceedings, which were recorded on the style of cause page of this decision.

Both parties agreed that the issues of heating fuel reimbursement and two-post dated cheques had been included in the applications before those previous proceedings.

The Tenant argued that the previous Arbitrator had neglected to include heating fuel reimbursement in their final written decision. The Landlord argued that the previous Arbitrator had included an award to the Tenant for the reimbursement of heating fuel in the final decision issued as a result of those proceedings.

Additionally, the Tenant argued that the previous Arbitrator had awarded the Landlord permission to cash the two post-dated cheques in the decision form those proceedings and that the Landlord had already sent those cheques to a collection agency. The Landlord agreed that they had been granted permission from the previous Arbitrator to cash the two-post dated cheques but argued that the cheques had been returned "Stop Payment" and that they now wanted an award for those stopped cheques. The Landlord agreed that they had already sent the two cheques in question to a collection agency for collection.

Res judicata is the legal doctrine preventing, the rehearing of an issue that has been previously settled by a decision determined by an Officer with proper jurisdiction.

I have reviewed both the Tenant's and the Landlord's applications to the previous proceedings, the decisions issued form those proceedings, and I have compared them to the applications that I have before me in this proceeding. I find that a previous Arbitrator had both the matters of heating fuel reimbursement and these two cheques before them and had issued a final decision regarding those matters.

I acknowledge the Tenant's argument that the previous Arbitrator had forgotten to include the matter of the heating fuel reimbursement in their final decision; however, if a party to a dispute believes that a mistake was made in a previous decision their resolution is to submit an application of correction or clarification of that decision. It is not acceptable to submit a new application for the matter to be heard all over again.

I find that the principle of *res judicata* bars me from considering either the Landlord's or the Tenant's request regarding heating fuel reimbursement, or the Landlord's claim regarding two returned cheques.

I will proceed in this hearing on both the Tenant's and Landlord's remaining claim items.

Preliminary Matter – *Withdrawal of item form the Landlord's claim*

During this hearing, the Landlord requested to withdraw their claim for the recovery of their collections costs in the amount of $1,303.04, as they had included that request due to a possible settlement offer that these parties had been considering.

The Tenant offered no objection to the Landlord's request to withdraw this item from their claim.

I find that the claim for $1,304.04 in collections costs has been withdrawn from these proceedings.

Preliminary Matter – *Tenant's Amendment Request*

The Tenant testified that they submitted an amendment to their application to the Residential Tenancy Branch (RTB) on July 11, 2020, three days before these proceedings.

The Landlord testified that they received notice of the Tenant's amendment to their application, by email from the Tenant, on July 11, 2020.

The interim decision issued as a result of the adjourned proceedings, that both these parties attended, granted permission to either party to amend their application, up to five days before today's hearing.

As the Tenant's amendment to their application was served on both the Landlord and the RTB three days before these proceedings, I will not consider the Tenant's amendment to their application in these proceedings.

Issues to be Decided

- Is the Tenant entitled to monetary compensation due to loss?
- Is the Landlord entitled to monetary compensation due to loss?
- Is the Landlord entitled to the return of their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties testified that the tenancy began in January 2018, as a month to month tenancy, with no written tenancy agreement. They also agreed that rent in the amount of $800.00 plus $100.00 in utilities was to be paid by the first day of each month and that no security deposit or pet damage deposit had been paid for this tenancy. The Landlord testified that the Tenant had moved out of the rental unit as of December 7, 2019, and the Tenant testified that they had moved out as of December 3, 2019.

The Tenant testified that they are requesting $3,600.00 in compensation, in the form of a nine-month retroactive rent reduction of 50% between March 2020 to November 2020, due to a loss of quiet enjoyment. The Tenant testified that in March 2018, the Landlord rented part of their property to a dog training facility and that due to the constant barking and increased traffic, they suffered a loss of the quiet enjoyment of their rental unit. The Tenant testified that they moved to this rental unit in the country to enjoy the peace and quiet but that was lost as soon as the dog training facility moved in. The Tenant testified there was constant barking and vehicle traffic between 8:30 a.m. to 8:30 p.m., Monday through Sunday. The Tenant submitted four videos and an aerial map of the two rental properties into documentary evidence to support their claim

The Tenant also testified that a neighbour of theirs had also complained about the barking noise coming from the dog training facility. The Tenant submitted a copy of a text message statement into documentary evidence.

The Landlord agreed that a dog training facility did rent the unit from them, located one building over from the Tenants rental property, but they disagreed that the dog training facility was disturbing the quiet enjoyment of the Tenant. The Landlord argued that many people living in the area of the rental property had dogs, including the Tenant, and

that this was a farming community with lots of animals and constant vehicle traffic on the road and the surrounding farmland. The Landlord testified that the dog training facility operated between 9:00 am and 5:00 pm, Monday through Friday and that the Tenant was at work during those times and would not have been disrupted by the training facilities clients.

The Landlord testified that in the decision dated November 19, 2018, issued as a result of a previous hearing with the RTB, they had been granted permission to cash two postdated cheques they were holding for this tenancy. The Landlord testified that both those cheques were returned stop payment, they are requesting to recover the return cheque charges they received from their bank. The Landlord submitted a copy of their bank statement into documentary evidence to support their claim.

The Tenant agreed that they had placed a stop payment on these two cheques.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

Tenant's Claim

The Tenant is claiming for $3,600.00 in compensation due to the loss of quiet enjoyment of the rental unit during their tenancy. Section 28 of the *Act* establishes a tenant's right to quiet enjoinment and reads as follows:

> ***Protection of tenant's right to quiet enjoyment***
>
> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
>
> *(b) freedom from unreasonable disturbance;*
>
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
>
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference*.

In determining if there has been a breach of the Tenants' right to quiet enjoyment, I must consider the guidance found in the Residential Tenancy Policy Guideline #6 Entitlement to Quiet Enjoyment, which states the following:

> **BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**
> "A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these"

I accept the verbal testimony of the Landlord and the Tenant that there was a dog training facility running one building over from the Tenant's rental property. However, these parties offered conflicting verbal testimony regarding the noise levels and disturbance caused by the dog training facility. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this matter, that is the Tenant.

I have reviewed the four videos submitted into documentary evidence by the Tenant, and I find that each video is roughly 30 seconds long, with a view of either the ground, or a deck, and that in each one of these videos, one to two dogs can be heard barking. I noted that in one of these videos, the Tenant can be overheard telling their own dog to stop barking while they video. Where I can accept, on a balance of probabilities, that there would be the sound of dogs barking, coming from a dog training facility, I am not able to definitively determine that the dogs heard barking in these videos were all located at the dog training facility.

As none of these videos submitted into documentary evidence show the dog training facility in question, I can not accurately determine if the barking heard in these videos was coming from dogs associated with that business.

I acknowledge the text message statement that the Tenant submitted into document evidence; however, after reviewing this text message, I find it to be of little evidentiary value. The text message is from an unidentified third party to these proceedings, and it is unknown where this person lives in relation to the Tenant. Additionally, I find that the content of this text message provides no facts to this case; no dates, no times, no names of people, and no locations. Overall, I find that this text message in less of a

statement of events and more a statement of how this third party felt about the Tenant's situation.

After reviewing all of the Tenant's documentary submission to this proceedings, I find that the Tenant has not provided sufficient evidence to satisfy me that they suffered a loss of quiet enjoyment due to the dog training facility. Therefore, I dismiss the Tenant's claim for compensation for the loss of quiet enjoyment.

The Tenant has also claimed for wrongful collection costs in the amount of $2,000.00, due to collection action taken by the Landlord to enforce the monetary order awarded in a previous hearing. It was explained to the Tenant, during these proceedings, that with the exception of compensation for the filing fee for an Application for Dispute Resolution, the Act does not permit a party to claim for compensation for other costs associated with participating in the dispute resolution process. Therefore, I dismiss the Tenant's claim to recover collection action costs.

Overall, I dismiss the Tenant's application in its entirety.

Landlord's Claim

The Landlord has claimed to recover $14.00 in returned bank fees that they were charged by their bank. I accept the agreed-upon testimony of these parties, that the Landlord had been granted permission, in a previous hearing with the RTB, to cash two cheques they were holding for this tenancy and that the Tenant had placed a stop payment on both of those cheques.

I have reviewed the decision from the previous hearing between these parties, and I find that the Tenant was in breach of the orders issued in that decision when they placed stop payments on these two cheques. I also find that the Landlord has provided sufficient evidence to prove the value of the loss due to the Tenant's breach of those orders. Therefore, I find that the Landlord has established an entitlement to the recovery of the loss of bank fees charged. I grant the Landlord an award of $14.00 for the recovery of their bank fees.

The Landlord has also claimed for the recovery of their costs of $26.00 for Canada Post fees for costs to mail documents related to these proceedings, for $8,029.10 in attorney fees, and $1,700.78 of interest charges for the unpaid monetary order they received from the previous proceedings. It was explained to both parties during these

proceedings that with the exception of compensation for the filing fee for an Application for Dispute Resolution, the Act does not permit a party to claim for compensation for other costs associated with participating in the dispute resolution process. Therefore, I dismiss the Landlord's claim to recover Canada post fees, attorney fees and interest.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord had been partially successful in their application, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this application.

Overall, I find that the Landlord has established an entitlement to a monetary order in the amount of $114.00; consisting of $14.00 in returned cheque fees, and $100.00 to recover the filing fee for this hearing.

Conclusion

I dismiss the Tenant's application in its entirety.

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **$114.00.** The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: July 17, 2020

Residential Tenancy Branch