



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL (Landlord)
 MNDCT (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Landlord filed the application July 15, 2020 (the “Landlord’s Application”). The Landlord sought compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant filed the application August 13, 2020 (the “Tenant’s Application”). The Tenant sought compensation for monetary loss or other money owed.

The Landlord appeared at the hearing. The Tenant appeared at the hearing with the Witness who was not involved in the call until required. I explained the hearing process to the parties. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Tenant confirmed receipt of the hearing package and evidence.

The Landlord testified that she did not receive the hearing package or evidence from the Tenant.

The Tenant testified that she served the hearing package and evidence on the Landlord at the address on the Landlord’s Application. The Tenant testified that she sent the package August 20, 2020 by registered mail. The Tenant testified that the package was returned and pointed to a photo of the returned package in evidence.

The Landlord testified that she moved from the address on the Landlord's Application to the rental unit address at the end of August. The Landlord testified that she did not notify the Tenant of the change of address. The Landlord testified that the Tenant knew she moved from someone else.

The Tenant testified that she did not know the Landlord had moved. The Tenant pointed out that someone wrote a different address on the returned registered mail package.

The Notice of Dispute Resolution Proceeding for the Landlord's Application issued to the Landlord and served on the Tenant includes the Landlord's address for service of documents on page two. The Landlord's Application was filed July 15, 2020 and the Tenant confirmed receipt of the hearing package which would have included the Notice of Dispute Resolution Proceeding. The Tenant was permitted to serve the Landlord at the address for service of documents listed. If the Landlord moved and could no longer receive documents at that address for service, the Landlord was required to let the Tenant know a new address for service. I am not satisfied the Landlord did let the Tenant know a new address for service as the Landlord acknowledged she did not let the Tenant know she moved. Therefore, the Tenant was entitled to serve the Landlord at the only address for service provided, which is the address for service on the Notice of Dispute Resolution Proceeding.

I acknowledge that the returned package has a different address written on it. However, I do not find that the Tenant was required to rely on a notation made by an unknown person about a new address for the Landlord.

I am satisfied based on the photo of the returned package submitted that the Tenant sent the package to the address for service provided on the Notice of Dispute Resolution Proceeding. I am satisfied based on the testimony of the Tenant that the package was sent August 20, 2020. I am satisfied the Tenant complied with rule 3.1 of the Rules of Procedure (the "Rules") in relation to the timing of service. I am satisfied registered mail was an acceptable method of service considering sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). I find the Landlord sufficiently served pursuant to section 71(2)(c) of the *Act*. I find the Landlord is deemed to have received the package August 25, 2020 pursuant to section 71(2)(b) of the *Act* considering section 90(a) of the *Act*.

Given the above, I considered both applications and all evidence.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all evidence submitted and all oral testimony of the parties and Witness. I will only refer to the evidence I find relevant in this decision.

I note that the Landlord exited the hearing without warning shortly before the end of the hearing. I continued without the Landlord as parties are expected to be present until the hearing is ended. I waited a few minutes before ending the hearing to allow the Landlord to call back into the hearing; however, the Landlord did not do so.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to reimbursement for the filing fee?
3. Is the Tenant entitled to compensation for monetary loss or other money owed?

Background and Evidence

The Landlord sought \$12,051.09 in compensation for the following:

- An additional occupant for 10 months;
- Additional utilities; and
- Future rent compensation.

The Tenant sought \$2,335.70 in compensation for the following:

- June and July rent;
- Moving expenses; and
- Loss of internet.

A written tenancy agreement was submitted and the parties agreed it is accurate other than the rent amount. The tenancy started October 01, 2019 and was for a fixed term ending September 30, 2020. The parties agreed rent was \$1,450.00 as of November 01, 2019 and not \$1,600.00 as written in the tenancy agreement.

The parties agreed the Tenant vacated the rental unit July 29, 2020.

Landlord's Application

An additional occupant for 10 months

The Landlord sought \$400.00 per month for 10 months on the basis that the Witness lived in the rental unit which the Landlord submitted was contrary to the tenancy agreement addendum which states:

People who do not appear on the application form cannot be accommodated and everyone accommodated must provide credit check and scores.

The Landlord said there is nothing in the tenancy agreement that says she would charge for additional occupants or how much she would charge.

The Landlord testified that she found out the Witness was living in the rental unit within weeks of the Tenant moving in. I asked the Landlord what steps she took to minimize the loss claimed and she said she did not take steps because the Witness was the father of the Tenant's children.

The Tenant replied as follows. The Witness was named on the rental application which has been submitted. The Witness did live at the rental unit. The Landlord knew the Witness lived at the rental unit.

Additional utilities

The Landlord sought \$1,511.09 for utilities because the Witness lived in the rental unit. The Landlord said there is nothing in the tenancy agreement saying additional utilities would be owed if there were additional occupants.

The Tenant replied as follows. She disputes this claim because there is no proof she and the Witness caused all of the utilities claimed. There were six people living in the upper suite. The tenancy agreement says utilities are included in rent.

Future rent compensation

The Landlord sought \$6,450.00 for future rent loss based on the Tenant or Witness posting the rental unit address in the news and stating that she is a horrible landlord. The Landlord submitted that nobody will rent the unit in the future because of the news article. The Landlord testified that she tried to re-rent the unit and nobody would take it.

I asked the Landlord to point to what section of the *Act, Residential Tenancy Regulation* or tenancy agreement she says was breached. The Landlord said the rental addendum was breached. She said the Tenant or Witness had to get permission to post her house in a public area. The Landlord could not point to what term in the addendum she was referring to and then started talking about terms related to maintenance and repairs.

The Tenant replied as follows. The image of the rental unit address in the news was provided by a neighbour of the rental unit address. The neighbour reported issues with the rental unit address to the news.

The Landlord submitted the following evidence:

- An email showing the Tenant told the Landlord she is a single mother;
- A statement from the Tenant in which she states she is a single mom;
- A news article about the Landlord and rental unit address;
- A Monetary Order Worksheet;
- The tenancy agreement;
- The decision on File Number 1;
- Documents relating to utilities; and
- A statement from N.D. about the Witness living at the rental unit.

Tenant's Application

June and July rent

The Tenant sought compensation for loss of quiet enjoyment due to noise and disturbances from the upstairs tenants. The Tenant testified as follows. The Landlord was given a complaint letter about the upstairs tenants June 17, 2020. The Landlord had been given a warning of a breach in relation to the loss of quiet enjoyment June 06, 2020. The Landlord did not act. She gave a notice ending the tenancy July 09, 2020. She is seeking June and July rent back because of the loss of quiet enjoyment and because the rental unit was uninhabitable. She was forced to move out in July.

The parties were before the RTB for a hearing February 03, 2020 on File Number 1. The Tenant sought compensation for loss of quiet enjoyment due to excessive noise from the upstairs tenants. The decision was issued February 11, 2020. The Landlord was ordered to take corrective action immediately to investigate the nature of the Tenant's claims for loss of quiet enjoyment and to provide an effective remedy to the

situation. The Tenant was granted \$1,500.00 in compensation for the loss of quiet enjoyment.

The Tenant confirmed this matter only relates to a further loss of quiet enjoyment experienced after February 11, 2020.

The Witness testified as follows. He witnessed noise, marijuana use and partying by the upstairs tenants every week and every day. Police were called four times. The upstairs tenants assaulted him. The Landlord was told about the issues and ignored them.

The Landlord disputed the Tenant's claims. I asked the Landlord if she took steps to deal with the upstairs tenants when ordered to do so in the decision on File Number 1. The Landlord testified as follows. She went to city hall and the police. Police said she could not get a police report. She asked her neighbours about the rental unit address and whether there were parties and such and the neighbours said no. She now lives in the rental unit and can hear some noise. She told the upstairs tenants to put something under their table and chairs. She told them not to make noise anymore. She told them to take off their shoes and to be quiet. She phoned, emailed and texted the upstairs tenants 20 times after the February 11, 2020 hearing. She did not issue the upstairs tenants a One Month Notice for Cause, she just warned them not to make noise.

The Landlord asked the Witness questions; however, none were sufficiently relevant to outline here.

Moving expenses

The Tenant sought compensation for moving expenses and submitted that she was forced to move due to the noise and disturbances caused by the upstairs tenants.

Loss of internet

The Tenant testified that she sent text messages to the Landlord about loss of internet July 16 and 29, 2020 and the Landlord never replied. The Tenant testified that she had to use her data on her cell phone for internet access. The Tenant pointed out that internet is included in rent in the tenancy agreement.

The Tenant submitted more than 150 pieces of evidence, the most relevant of which are as follows:

- A copy of the rental application showing the Witness was listed under “other intended occupants”;
- Evidence showing someone other than the Tenant spoke to the news and provided a photo of the rental unit address;
- A signed witness statement from S.O. dated June 21, 2020 describing the upstairs tenants as a “nightmare” and detailing excessive noise at any hour of the day and night, calls to the police and police attendance at the rental unit address due to the upstairs tenants;
- Documentation of expenses claimed;
- Letters of complaint from the Tenant to the Landlord about the upstairs tenants from May, June and July of 2020;
- Text message complaints from the Tenant to the Landlord about the upstairs tenants;
- Videos of noise from the upstairs unit; and
- A letter dated July 28, 2020 from the Tenant to the Landlord about lack of internet access.

Analysis

Pursuant to rule 6.6 of the Rules, it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 7 of the *Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Landlord's Application

An additional occupant for 10 months

I decline to award the Landlord this request for two main reasons.

First, I am not satisfied the Tenant breached the term of the addendum relied on as the term refers to people on the application form and I am satisfied based on the copy of the application form submitted that the Witness did appear on the application form.

Second, I am not satisfied the Landlord took reasonable steps to mitigate the loss claimed. The loss claimed relates to the Witness living in the rental unit. The Landlord acknowledged she was aware the Witness was living in the rental unit within weeks of the Tenant moving in. If the Landlord took issue with this, or believed further monies were owing because of this, the Landlord should have addressed these issues when she learned that the Witness was living in the rental unit. It is unreasonable for the Landlord to choose to take no steps to address these issues and then seek 10 months of compensation. This is also a failure to mitigate loss.

I am not satisfied the Landlord has proven a breach or mitigation and therefore decline to award the Landlord the compensation sought.

Additional utilities

I decline to award the Landlord this request for the same reasons as outlined above.

Future rent compensation

I decline to award the Landlord this request as the Landlord could not point to any section of the *Act*, *Regulations* or tenancy agreement that could reasonably be said to have been breached in relation to the allegations. Further, I am not satisfied the *Act* or *Regulations* address a tenant speaking to the news about a landlord or the rental unit. As well, I am satisfied based on the article provided that someone other than the Tenant or Witness provided the photo, which I also do not find to be an RTB issue. Lastly, the Landlord has not provided sufficient evidence to show that the news article impacted her ability to re-rent the unit as none of the documentary evidence shows this. I do not find the Landlord's assertion that the news article impacted her ability to re-rent the unit alone sufficient.

I am not satisfied the Landlord has proven a breach, a loss, the value of the loss or mitigation and therefore decline to award the Landlord the compensation sought.

Filing fee

I decline to award the Landlord reimbursement for the filing fee given she was not successful in the application.

Tenant's Application

June and July rent

Section 28 of the *Act* protects the Tenant's right to quiet enjoyment.

Policy Guideline 6 relates to quiet enjoyment and states at page one:

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.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or

unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment...

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.

I am satisfied based on the testimony of the Tenant, testimony of the Witness, witness statement of S.O., letters of complaint from May, June and July of 2020, text message complaints and videos of noise from the upstairs unit that the Tenant's right to quiet enjoyment was breached by the upstairs tenants or their guests.

I am satisfied based on the prior decision on File Number 1, testimony of the Tenant, testimony of the Witness, letters of complaint from May, June and July of 2020 and text message complaints that the Landlord was aware of the breach. I emphasize that the Landlord was ordered February 11, 2020 by the Arbitrator in File Number 1 to take corrective action immediately to investigate the nature of the Tenant's claims for loss of quiet enjoyment and to provide an effective remedy to the situation.

I am not satisfied the Landlord took sufficient steps to address the issues with the upstairs tenants. The Landlord seemed to continue to be of the view that the upstairs tenants were not causing problems which is contradicted by the decision on File Number 1, testimony of the Tenant, testimony of the Witness, witness statement of S.O., letters of complaint from May, June and July of 2020, text message complaints and videos of noise from the upstairs unit. The Landlord's view leads me to question whether the Landlord took steps to address the issues. There is insufficient evidence before me to support the Landlord's testimony that she took steps to address the issues.

Further, I am not satisfied the steps described by the Landlord, such as telling the upstairs tenants to take their shoes off and telling them to put something under their table and chairs were sufficient as the noise was not only from shoes or furniture.

Further, the decision on File Number 1 notes that the noise issue had been ongoing for a number of months (page 4). I am satisfied based on the evidence already outlined that the noise issue continued in May, June and July. Given the order in the decision on File Number 1 and the number of months the issues with the upstairs tenants had been ongoing, I am not satisfied the steps the Landlord says she took were sufficient.

In the circumstances, I am satisfied the Landlord failed to protect the Tenant's right to quiet enjoyment.

I am satisfied the Tenant experienced a loss given the issues caused by the upstairs tenants as I am satisfied based on the evidence already outlined that the noise and issues were frequent and ongoing for a number of months. I am satisfied based on the evidence already outlined that the Tenant did not get to enjoy the rental unit free from unreasonable disturbance.

I am satisfied based on the prior decision on File Number 1, testimony of the Tenant, testimony of the Witness, letters of complaint from May, June and July of 2020 and text message complaints that the Tenant took steps to mitigate the loss claimed by notifying the Landlord of the issues, asking the Landlord to address the issues and seeking orders through the RTB to have the Landlord address the issues.

I am not satisfied the Tenant is entitled to reimbursement of all monies paid for rent for June and July due to the loss of quiet enjoyment. I did not understand the Tenant to say that she could not use the rental unit at all in June and July due to the issues with the upstairs tenants and I am not satisfied this was the case based on the evidence provided. However, given I am satisfied the disturbances were frequent and ongoing for a number of months, I am satisfied the Tenant is entitled to \$500.00 for each of June and July. I note that this was the amount awarded in the decision on File Number 1 for October, November and December. I find this amount appropriate given the Tenant was still dealing with the issues in June and July. I award the Tenant \$1,000.00.

Moving expenses

In relation to moving expenses, these will only be awarded in rare circumstances as occupation of a rental unit is by its nature temporary and therefore a tenant will incur moving expenses at some point. Here, I find that the Tenant chose to move and that the Tenant was not actually forced to move. I acknowledge that the Tenant feels that she was forced to move because of the situation with the upstairs tenants; however, it was still the Tenant who ended the tenancy. I am not satisfied this is a rare circumstance that warrants awarding the Tenant moving expenses.

Loss of internet

Section 65(1)(f) of the *Act* states:

65 (1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders...

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

I am satisfied based on the tenancy agreement that internet was included in the rent amount. I am satisfied based on the July 28, 2020 letter that the Tenant lost internet access for a period of time. I am satisfied the Landlord did not take steps to correct this based on the testimony of the Tenant and letter in evidence. The Landlord did not state that she did take steps to correct this and did not point to evidence showing she took steps to correct it. I am satisfied the loss of internet access resulted in a reduction in the value of the tenancy agreement. I am satisfied this loss can be calculated based on the cost of the Tenant accessing alternative sources for the internet. I am satisfied based on the account summary in evidence that the Tenant spent \$40.00 doing so through her cell phone data. I am satisfied the rent should be reduced by \$40.00 and award the Tenant this \$40.00.

Summary

The Landlord's Application is dismissed without leave to re-apply.

The Tenant is awarded \$1,040.00 pursuant to section 67 of the *Act*. The Tenant is issued a Monetary Order for this amount.

Conclusion

The Landlord's Application is dismissed without leave to re-apply.

The Tenant is awarded \$1,040.00 and is issued a Monetary Order for this amount. This Order must be served on the Landlord as soon as possible. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 20, 2020

Residential Tenancy Branch