



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT FFT

Introduction

The tenant seeks compensation pursuant to section 67 of the *Residential Tenancy Act* ("Act"). She also seeks recovery of the filing fee under section 72 of the Act. The tenant filed an application for dispute resolution on August 24, 2020 and a hearing was held on November 26, 2020. The tenant, the landlord, and the landlord's agent attended the hearing and they were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

Issues

1. Is the tenant entitled to any or all of the compensation claimed?
2. Is the tenant entitled to recovery of the application filing fee?

Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which is relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began on December 1, 2017, though the tenant testified that she moved in a little bit before that. The tenancy officially ended on March 31, 2020, but the tenant essentially vacated the rental unit in early February 2020. Monthly rent was initially \$1,980.00, later increased to \$2,059.00 in April 2018. After utilities are factored in, the rent was about \$2,306.00. The tenant paid a security deposit of \$990.00, which was later returned.

In this application, the tenant seeks \$6,612.00 for, as submitted in the description portion of the application for dispute resolution (reproduced as written), the following:

The harassment [from the downstairs tenant] intensified in Nov and by Feb it was no longer safe to reside in the unit. I had to move out and continue to pay rent. I have asked the landlord numerous times to have the canopy erected by the other tenant removed. It was obstructing my access to the my unit and a danger. When the other tenant's canopy

collapsed onto my car, it damaged the vehicle. Two months rent and utility 2306 X 2
Hardship 1000 Damage to vehicle 1000 Total 6612

The tenancy started off well enough, and the tenant and the downstairs tenant were on good terms. However, just before the three-year mark (approximately October 2019), the downstairs tenant began behaving erratically. The tenant believes that the change in behavior may have been the result of a motor vehicle accident. The downstairs tenant began drinking and had multiple persons over, with whom he engaged in late night profanity-laced screaming matches. This disturbed the tenant and her family. This behavior occurred from October 2019 until the tenant moved out in February 2020.

In addition, the downstairs tenant –described as a “burly guy with tattoos” – appeared to be sensitive to noise. He reacted to the tenant, who resided upstairs, and her family moving about by hitting his ceiling with something hard. Other behavior involved the downstairs tenant throwing garbage and recycling in front of the tenant’s door.

Regarding the canopy referred to above, the tenant described it (and included photographs) as a large white tent-like structure. It is the type of canopy that covers a vehicle. The downstairs tenant erected this canopy in his parking spot, but the canopy encroached onto the tenant’s parking spot. There were two parking spots in front of the house, one for each tenant. The tenant could not open her vehicle door at one point because of the canopy’s encroachment, and at one point after a particularly windy day the canopy flipped up in the air and came crashing down upon the tenant’s vehicle. The vehicle was scratched and dented.

After the windstorm, the stubs where the canopy poles would have been inserted were left in place resulting in a tripping hazard. The tenant testified that she sent “so many emails and messages to the landlord” pleading for help, all to no avail.

The landlord’s agent testified that after the tenant told her about the white canopy, she asked the downstairs tenant to remove it. However, she later determined that the downstairs tenant was allowed to erect such a structure in his parking spot. She testified that the downstairs tenant was “pretty good” for the first two to three years, but then he started paying rent late in August or September of 2019.

As for the tenant’s complaints about the downstairs tenant, the landlord surmised that “something happened between them” and that the downstairs tenant in fact complained about noise from the (upstairs] tenant.

The tenant submitted into evidence a copy of the written tenancy agreement, copies of photographs of the white canopy, and a copy of a purported email sent to the landlord regarding the canopy. No evidence was submitted by the landlord.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7(1) and 67 of the Act, which state:

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. [. . .]

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The tenant submitted a "Computation of amount owed" document, which set out the claims:

Two months rent	\$2,306.00
	\$2,306.00
Hardship	\$1,000.00
Damage to vehicle	\$1,000.00

The tenant did not articulate the basis on which these amounts were sought, other than to say in her testimony that she and her family had to listen to the downstairs tenant scream, swear, and pound the ceiling in response to noise. And, as stated in the application, issues involving alleged harassment and safety.

Section 28 of the Act states that 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.”

The tenant testified that she contacted the landlord frequently and sent “so many emails and messages to the landlord.” However, not a single copy of an email, text message, or letter sent from the tenant to the landlord regarding the downstairs tenant’s behavior was submitted in evidence. There is evidence of one text message between the downstairs tenant and the tenant, but this is insufficient to persuade me that the downstairs tenant’s behavior was such that the tenant is somehow now entitled to compensation. I find it rather peculiar that, while the tenant extensively documented the issues involving the canopy (including an email to the landlord), she failed to document any of the downstairs tenant’s erratic, safety-compromising behavior.

As such, I am not persuaded that the landlord, or the downstairs tenant’s actions condoned or permitted by the landlord, resulted in a breach of section 28 of the Act that might result in compensatory relief being granted to the tenant. As such, I dismiss, without leave to reapply, the tenant’s claim for compensation related to this part of the application.

In respect of the tenant’s claim for \$1,000.00 for damage to the vehicle, the tenant submitted no documentary evidence from ICBC or any estimate or invoice from an autobody repair shop establishing a basis for this dollar amount. Without such documentary evidence proving the amount I am unable to consider this aspect of the tenant’s claim.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving her claim for compensation.

Conclusion

I dismiss the tenant’s application without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: November 26, 2020

Residential Tenancy Branch