



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, OLC, MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 23, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord comply with the *Act*;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time. At the start of the hearing, the parties acknowledged service and receipt of their respective Application and evidence packages. While the Landlord stated that some videos were poor quality, he did acknowledge receipt. As such, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The Parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the *Act*, tenancy agreement, or regulations, pursuant to Section 62 of the *Act*?
2. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?

3. Is the Tenant entitled to recover the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The parties testified and agreed to the following: the tenancy began on August 1, 2019. Currently, the Tenant is required to pay rent in the amount of \$800.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$400.00 which the Landlord continues to hold.

The Tenant is seeking monetary compensation in the amount of \$5,600.00 which is equivalent to a full rent reduction between the months of May 2021 to November 2021. The Tenant states that she is seeking compensation due to a breach of her quiet enjoyment. She is seeking that the Landlord take further action to ensure that her quiet enjoyment is maintained at the rental unit.

The Tenant described incidents between her and two other occupants at the rental property. The Tenant stated that she has been screamed at, pushed, belongings moved, dog kicked, and accused of doing malicious things that have been unfounded. The Tenant stated that she has expressed her concerns to the Landlord, who “*only provides lip service*”. The Tenant stated that the Landlord has asked her to move her belongings from the common area walkway as it poses a tripping hazard.

The Tenant stated that she suffers from post concussion syndrome and that it has been difficult for her being stuck at home and unable to work. The Tenant stated that she had been provided two separate notices to end tenancy, which she successfully disputed given the Landlord had not provided the correct information on the Notices. The Tenant stated she feels as though the Landlord is seeking to end her tenancy, instead of dealing with the other occupants in the same manner.

In response, the Landlord stated that he has acted on each of the Tenant’s complaints. The Landlord stated that when a complaint is received, he prefers to call or meet the occupants in person to discuss the issues verbally. The Landlord stated that the other occupants at the rental property have grievances against the Tenant as well. The Landlord stated that while the other occupants are receptive to abiding by his requests and regulations, the Tenant is more resistant and refuses to discuss matters with the Landlord, making it difficult for him to achieve resolution.

The Landlord stated that he wishes that the occupants at the rental property all got along, however, each of them have conflicting stories with the Tenant. The Landlord stated that he is of the impression that the Tenant tends to instigate issues with the other occupants who have grown tired of her antics. The Landlord used the Tenant's complaint of her dog being kicked as an example. The Landlord referred to the video provided by the Tenant which shows the Tenant's dog, not on a leash, running up into the neighbouring rental unit, before barking and running back out again. The Landlord stated that there is no evidence of the dog being kicked, however, clearly shows the Tenant should have better control of her dog, who should not be entering other units.

The Tenant confirmed that the Landlord speaks to the other occupants about her concerns and that it "*seems to work for weeks and sometimes months, but starts up again.*" The Tenant confirmed that on one occasion she approached another occupant as she was getting off the bus to ask about why she kicked the Tenant's rocks which were left in the common area. The Landlord stated that this was an example of the Tenant instigating an argument over a misunderstanding as the other occupant had tripped over the rocks which were left on the ground on a common area walkway.

Analysis

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
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

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.

The Residential Tenancy Branch Policy Guideline #16 Compensation For Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- Loss of access to any part of the residential property provided under a tenancy agreement;
- Loss of a service or facility provided under a tenancy agreement;
- Loss of quiet enjoyment;
- Loss of rental income that was to be received under a tenancy agreement and costs associated; and
- Damage to a person, including both physical and mental

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In this case, the Tenant is seeking a full rent reduction between May 2022 and November 2021, equivalent to \$5,600.00 in relation to loss of quiet enjoyment. I find based on the Tenant's own verbal testimony, that she believes that the Landlord has discussions with the other occupants at the rental property when she expresses concerns. The Tenant acknowledged that this is effective for weeks and sometimes months. As such, I find that the Landlord has taken sufficient action to resolve the conflict between the Tenant and other occupants.

I find that the Tenant has provided insufficient evidence that she is being substantially interfered with to the extent that it constitutes a breach of quiet enjoyment. Instead, I accept that there is conflict between the Tenant and occupants and that the Tenant could be doing more on her part to avoid potential conflict by not engaging with the other occupants. Should the Tenant have any further grievances, she is encouraged to respectfully communicate her concerns to the Landlord instead.

In light of the above, I find that the Tenant is not entitled to an order that the Landlord comply with the Act. I further find that the Tenant has provided insufficient evidence to demonstrate that she is entitled to monetary compensation. As such, I dismiss the Tenant's Application in its entirety without leave to reapply.

Conclusion

The Tenant has provided insufficient evidence to demonstrate that the Landlord has breached the Act, tenancy agreement, or regulations. Furthermore, the Tenant has not demonstrated an entitlement to compensation for loss of quiet enjoyment. The Tenant's Application is therefore dismissed in its entirety without leave to reapply.

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: March 16, 2022

Residential Tenancy Branch