



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the "Act") for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was represented by counsel and assisted by a family member.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and ordered not to make any unauthorized recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began on March 1, 2017 and ended June 30, 2020 in accordance with a Notice to End Tenancy for Landlord's Use. The monthly rent was \$1,664.00 payable on the first of each month. The rental unit is the upstairs portion of a detached home with two units.

There have been two prior hearings in regards to this tenancy under the file numbers on the first page of this decision. The first hearing occurred in 2020 where the landlords' notice to end tenancy was upheld and an Order of Possession issued. The tenant also sought a monetary award of \$35,000.00 in that application for loss of quiet enjoyment and breaches. The monetary issue was severed and dismissed with leave to reapply by the presiding arbitrator.

The second hearing occurred in 2021 where the tenant applied for a monetary award equivalent to 12 months' rent pursuant to section 51. That application was dismissed without leave to reapply.

The tenant presently seeks a monetary award of \$35,000.00 for loss of quiet enjoyment during the tenancy.

The tenant submits that during the tenancy they were in conflict with the other occupants of the rental building regarding their noise level, behaviour of pet dogs, use of parking spots, use of common spaces like the yard and complaints about missing mail delivery. The parties submit that throughout the tenancy there have been approximately 3 sets of occupants residing in the downstairs suite.

The tenant submits that throughout the course of the tenancy they have been subject to harassment and baseless complaints by the other occupants of the property and the landlord has continually sided with the other occupants in a campaign of coordinated attacks. The tenant suggests that the other occupants are the ones who have breached the rules of the tenancy or the Act through their unauthorized use of parking spaces, common yard, excessive noise and false statements. The tenant characterizes the landlord as being biased and failing to provide quiet enjoyment of the rental unit.

The tenant's witness is their partner who would attend at the rental unit periodically during the tenancy. They testified that they believe there was considerable "collusion" between the other occupants of the property and the landlord with the landlord addressing complaints from the neighbors promptly while delaying in responding to the tenant's various grievances. The witness testified about numerous complaints made by the tenant to the landlord about issues such as the use of shared laundry facilities by the occupants, the behaviour and noise level of the tenant's pet dog, and use of parking spaces. They say the landlords would not respond in a timely manner and their response to the issues were inadequate.

The tenant submits that due to the behaviour of the three successive occupants of the other suite of the rental building and the landlord's failure to respond to their complaints while enforcing complaints against the tenant, they have suffered a considerable loss of quiet enjoyment for the tenancy.

The landlords dispute the tenant's claim in its entirety. The landlords submit that they have responded to the multiple complaints from the tenant and the other occupants in a timely and reasonable manner. The landlords testified that they have spent a considerable amount of time investigating complaints, acting as mediators for the occupants of the rental property, arranging for meetings, exploring mediated settlements and issuing multiple warning letters.

The landlord submitted into documentary evidence numerous pages of correspondence, text messages and notices sent between the parties and the other occupants of the property. The landlord also submitted multiple video and audio files recording the noise level of the tenant and their dog, as well as an incident where the tenant rants, swears and threatens the other occupants of the property for their use of laundry facilities.

Analysis

Pursuant to Rule of Procedure 6.6 the applicant bears the onus to prove their case on a balance of probabilities.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 28 of the *Residential Tenancy Act* speaks to a tenant's right to quiet enjoyment, and provides as follows:

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.

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

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 a 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 covenant of 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.

I find the tenant has failed to meet their evidentiary burden to establish any portion of their claim. I find the tenant's submissions to consist primarily of subjective complaints, conjecture about the motivations of others and irrelevant grievances about their personal circumstances. I find no breach on the part of the landlords that would give rise to a basis for a monetary award.

I find the testimony of the tenant and their witness to be hyperbolic complaints and accusations that are not supported in the documentary materials. I find the tenant's characterization of the conduct of the landlord as harassment when they are communicating complaints about noise and behavioural issues to be unreasonable. Despite many of the tenant's complaints such as their accusation that the neighbor's use of laundry facilities is excessive being patently unreasonable, the evidence demonstrates that the landlord took timely steps to address the complaints.

Based on the evidence including the copies of correspondence and recorded interactions it is clear that the tenant is the one who acts in a disruptive, hostile and unreasonable manner, failing to respond to requests for information and verbally attacking and harassing other occupants of the property. I find that the landlord acted in a reasonable manner consistent with their duties of providing quiet enjoyment to all of the occupants of the property.

I find insufficient evidence that the landlord has failed in their duty to provide quiet enjoyment as set out in the Act, such that it would give rise to a monetary award. I find the tenant has failed to meet their evidentiary burden and accordingly dismiss their application in its entirety without leave to reapply.

Conclusion

The tenant's application is 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: September 13, 2022

Residential Tenancy Branch