



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*). On August 12, 2022 the tenants applied for:

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

On August 31, 2022, the tenants filed an amendment adding a claim for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's counsel and an articulated student represented the landlord.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Both parties agree that the tenants served the landlord with the tenants' application for dispute resolution, amendment and evidence via registered mail. The landlord did not raise any issues with the timing of service. I find that the landlord was served with the above documents in accordance with sections 88 and 89 of the *Act*.

On December 21, 2022, 12 clear days before this hearing, the tenants entered into evidence an email dated September 13, 2022. The tenants testified that the above email was not served on the landlord.

Section 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the "Rules") states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that since the tenants did not serve the September 13, 2022 email on the landlords and served the Residential Tenancy Branch less than 14 clear days before the hearing, the September 13, 2022 email is excluded from consideration.

The articulated student submitted that the landlord's evidence was personally served on a person residing with the tenants on December 21, 2022. The tenants testified that they received the landlord's evidence on December 21, 2022.

Section 3.15 of the *Rules* states that the Respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. I find that the tenants were served with the landlord's evidence 12 clear days before the hearing, in accordance with section 3.15 of the *Rules* and section 88 of the *Act*.

Issue to be Decided

1. Are the tenants' entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
2. Are the tenants' entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. Are the tenants' entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act* of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 15, 2022 and ended on August 13, 2022. Monthly rent in the amount of \$1,600.00 was payable on the first day of each month. A security deposit of \$800.00 was paid by the tenants to the landlord. The subject rental property is a basement suite in a house. For the duration of the tenancy, the landlord's grandson (the "grandson") resided in the main portion of the subject rental house.

The tenants testified that they are seeking the following damages from the landlord, for the landlord's failure to advise them of the safety danger posed by the grandson:

- all rent paid for the duration of the tenancy- \$8,000.00,
- unexpected loss of home- \$12,000.00, and
- psychological trauma- \$15,000.00.

The tenants testified that they received the keys to the subject rental property from the landlord on March 15, 2022 and moved into the subject rental property on March 21, 2022. The tenants testified that on March 21, 2022, while they were moving in, the grandson accosted them, accused them of speaking ill of him and told them to leave.

The tenants testified that they called the landlord and told her of the altercation, and the landlord then contacted her grandson and told him to leave the tenants alone. The tenants testified that at that time, they asked the landlord if there were any safety issues regarding the grandson and the landlord assured them that this was a one-off incident. The tenants testified that had the landlord informed them that the grandson posed a safety risk, they would not have moved in. The landlord testified that the tenants never called her on March 21, 2022 to advise her of the above altercation.

The tenants testified that on May 17, 2022 at 9:30 p.m. they were walking into the subject rental property from their car, carrying groceries, when the grandson aggressively approached them and accused them of making a mess in the garbage area. The tenants testified that it was obvious that the grandson was intoxicated, and

the tenant threatened to hit tenant O.A. Tenant N.S. testified that the grandson then exposed his privates to her.

The tenants testified that they called the landlord and advised her of the above incident, and she told them that she couldn't do much about her grandson because he doesn't listen to her. The landlord denied being informed of the above incident.

The tenants testified that on July 6, 2022 at 12:30 a.m. they were sleeping when the grandson attempted to break into the subject rental property through a window. The tenants testified that the grandson was intoxicated and when tenant O.A. confronted the grandson outside, the grandson attacked O.A. The tenants entered into evidence a video of the assault. The tenants testified that they called the police and the landlord and advised both of the above incident. The tenants testified that the police attended and the landlord did nothing. The landlord denied being informed of the above incident.

The tenants testified that on more than one occasion the grandson turned off their power, and that on one occasion it was off for almost one week. The tenants testified that they advised the landlord of same via telephone and that it took her a long time to get the power back on.

The tenants testified that on August 11, 2022 the tenant started stomping on the floor and screaming and tried to get through the door adjoining the subject rental property from the grandson's unit. The tenants testified that through the door, the grandson threatened to "slice them up". The tenants testified that they called the landlord and she asked them not to call the police but they did anyways. The tenants testified that the police attended and found alcohol and a machete in the grandson's unit.

The tenants testified that another time, before the August 11, 2022 incident, the grandson was jumping on the floor and banging the adjoining door. Tenant N.S. testified that she was home alone and called her husband to come home and called the police, who attended.

The tenants testified that after the August 11, 2022 incident, they left the subject rental property and did not return until August 13, 2022, to move out with a police escort. The tenants testified that they did not feel safe at the subject rental property and that they never had any quiet enjoyment of the subject rental property. The tenants testified that their neighbours told them that the previous tenants ran away from the subject rental

property for the same reasons they left. No documentary evidence was submitted to support the above statement. No witnesses were called during the hearing.

Tenant N.S. testified that on August 13, 2022 they moved their belongings into an in-law's garage and moved themselves into a friends' storage room for 33 days until they were able to find a new place to live.

The tenants testified that the landlord intentionally withheld information about the safety risks posed by her grandson and did nothing during the tenancy to secure their quiet enjoyment of the subject rental property.

The tenants entered into evidence two undated videos of the door adjoining the subject rental property with the grandson's suite. In one video, the tenants allege the grandson is harassing them; however, the grandson cannot be heard in the video. In the second video, the tenants and the grandson can be heard arguing and the grandson asks tenant N.S. to send tenant O.A. out to fight. Tenant O.A. states that he does not want to fight. Tenant O.A. asks the grandson what he's going to do to him, and the grandson responds that it is going to fuck tenant O.A. up.

The tenants testified that in their dealings with the landlord, she informed them that she is fearful of her grandson and that their only option was to call the police. The tenants testified that the landlord spoke to the police on one occasion.

The landlord testified that during the tenancy, the tenants never informed her of any issues with her grandson and that the first time they told her about problems with her grandson was on the day they moved out.

The landlord's signed affidavit states:

6. In all the years I have known [my grandson], I was not aware of any history of violence or aggression by him. I knew him to be a quiet and nice grandson growing up.

7. I was not informed by my grandson, [name redacted for privacy], of any altercations that occurred at any relevant time, despite seeing him on several occasions.

8. I was not aware of the altercations that occurred between [my grandson] and the Applicants until the Applicants called me to inform me that they had transpired.

9. As a result, I could not take action to alleviate the Applicants' concerns until after the altercations had occurred.

Counsel submitted that the tenants have not provided any evidence to prove that the landlord had any knowledge of the issues between the tenants and the grandson. Counsel submitted that the landlord only became aware of the issues between the grandson and the tenants on the last day of the tenancy.

Counsel submitted that it is incumbent on the tenants to provide evidence to prove their position, such as phone records proving the calls allegedly placed to the landlord. Counsel submitted that no documentary evidence proving the landlord's knowledge of the issues between the grandson and the tenants were provided.

Counsel submitted that the tenants failed to mitigate their damages and have not provided a basis for their monetary claims. Counsel submitted that the tenants failed to minimize their losses because they chose to stay for months despite the issues with the grandson.

The tenants testified that they have the phone records but did not include them because they did not know the landlord would deny receiving their calls until they received the landlord's evidence. The tenants testified that by the time they received the landlord's evidence their evidence service deadline had lapsed.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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 one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Pursuant to section 67 of the *Act*, to be successful in a monetary claim, the tenant must establish all four of the following points:

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

Failure to prove one of the above points means the tenant's claim fails.

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.

Residential Policy Guideline 6 states 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 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.

As stated above, a landlord may be found liable for a breach of quiet enjoyment if they were aware of the interference or unreasonable disturbance but failed to take reasonable steps to correct these.

I find that the tenants have failed to prove, on a balance of probabilities, that they informed the landlord about the altercations between themselves and the grandson

because the landlord disputed being advised and the tenants have not provided any evidence other than their testimony to prove that the landlord was so advised.

I find that all of the tenants' monetary claims stem from the alleged breach of section 28 of the *Act*. As I have determined that the tenants have not proved such a breach, all of the tenants' monetary claims fail. The landlord cannot be held responsible for a loss of quiet enjoyment suffered by the tenants if the landlord was not made aware of the issue by the tenants.

In addition to my finding that the tenants have not proved the landlord's breach of section 28 of the *Act*, I find that the tenants have also failed to prove that they suffered psychological harm because a report from a doctor or other medical professional finding same, was not entered into evidence. The tenants claim for \$15,000.00 for psychological harm is therefore dismissed without leave to reapply.

The tenants did not testify as to how the \$12,000.00 figure was arrived at. I find that the tenants did not prove the value of their alleged loss for "unexpected loss of home" as no testimony on this point was provided and no documentary evidence relating to the \$12,000.00 figure was entered into evidence. As stated above, the party claiming a loss must prove the amount or value of that claim. I find that the tenants have failed to do so, and so their claim for \$12,000.00 is dismissed without leave to reapply.

As this tenancy has already ended, I find that the tenants no longer have standing for an Order for the landlord to comply with the *Act*. As such I dismiss the above claim without leave to reapply.

As the tenants were not successful in this application for dispute resolution, I find that they are not entitled to recover the filing fee from the landlord, in accordance with section 72 of the *Act*.

Conclusion

The tenants' application for dispute resolution is dismissed 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: January 04, 2023

Residential Tenancy Branch