

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: *MNDC, FF.*

Introduction

This hearing dealt with an application by the tenant, for a monetary order for compensation and to recover the fee to file this application, pursuant to Sections 67 and 72 of the *Residential Tenancy Act*.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord was assisted by an interpreter. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

The tenant applied for compensation in the amount of \$2,500.00. However, during the hearing, the tenant changed the monetary claim to the equivalent of two months rent, in the amount of \$1,100.00.

Issues to be decided

Is the tenant entitled to a monetary order for compensation in the amount of \$1,100.00 due to inconvenience endured during the tenancy? Was the landlord negligent in conducting his duties as a landlord?

Background and Evidence

Based on the sworn affirmed testimony of both parties, the facts are as follows:

The tenancy started on September 01, 2008 and the tenant paid a security deposit of \$300.00 and rent in the amount of \$575.00. In the following month, the landlord lowered the rent to \$550.00 at the tenant's request and allowed the tenant to keep a pet. The tenant moved out on February 28, 2009 and the landlord returned the security deposit to the tenant.

The tenant testified that due to inadequate insulation between the upstairs suite in which the landlord resides and the lower rental unit in which the tenant resided, the

tenant was constantly disturbed with everyday sounds that included the beeping of the microwave oven. The landlord returned from work at 3 a.m. and this disturbed the tenant's sleep every night. The tenant advised the landlord of this concern in a letter dated September 30, 2009.

The tenant also stated that the landlord had attempted to enter the rental suite without notice and after advising the landlord of the landlord's responsibilities and the tenant's rights, the landlord did not repeat this behaviour.

The tenant's also complained about the condition of the outdoor steps which lead down to the rental suite. The tenant stated that the steps were dirty, one step was loose and some steps had missing or inadequate weather stripping. The tenant stated that the tenant wrote a letter to the landlord advising the landlord of the unsafe condition of the steps in a letter dated November 04, 2008. The tenant also stated that the landlord fixed the loose step on November 18, 2008 but the steps were still not safe resulting in the tenant slipping down the stairs on two different occasions. The tenant has submitted a detailed log of events which indicate that the tenant slipped down the stairs three times.

The tenant stated that on January 09, 2009, the landlord came to the tenant's place of work (large membership grocery store) along with another male and stared at the tenant while conducting their business at the membership desk. The tenant stated that the landlord's behaviour made the tenant uncomfortable resulting in the tenant having to leave work early and suffer a loss of income.

On January 12, 2009, the tenant made this application for compensation and also wrote a letter to the landlord in which the tenant outlined the above concerns, asked for \$2,500.00 in compensation and gave the landlord notice to end tenancy effective March 01, 2009. The tenant has submitted into evidence photos of the stairs and copies of letters to the landlord.

The landlord testified that on November 18, 2008, the landlord fixed the loose step, cleaned the stairs, removed the snow and made the stairs safe for use. The landlord

stated that the house is three years old and the weather strips were in good condition at the start of the tenancy. The landlord stated that it appears as if the strips were removed which is not the result of normal wear and tear and the landlord intended to replace the broken and missing strips when the weather permitted. The landlord denied having received the letter dated November 04, 2008 (regarding the unsafe stairs) in November, but received it in the notice of hearing package. The landlord stated that the visit to the grocery store was for the purpose of purchasing groceries and denied staring at the tenant. The landlord also stated that the landlord made attempts to comply with all the tenant's requests including the request to lower the rent, keep a pet, fix the stairs and be mindful of the noise disturbances to the tenant.

Analysis

It is important for the claimant to know that to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the claimant, that being the tenant, to 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 landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The photographs of the stairs show a step with half a weather strip and one step with a strip detached and placed on the step. The area that the strip was fixed to appears newer and clean in the photograph as compared to the rest of the step. I find that it is more likely than not that the strip was detached from the step close to the time that the photograph was taken. The entire strip was placed on the step and appeared to be intact. The landlord has a responsibility to repair and maintain the rental unit and the reasonable efforts of a landlord to perform required repairs and maintenance cannot form the basis for a claim for compensation.

Having reviewed the evidence and testimony of both parties, I find that the landlord attempted to visit the tenant without notice on that one occasion and did not do so after the tenant drew the landlord's attention to the relevant sections of the *Residential Tenancy Act*. The noise disturbances that the tenant described are a product of everyday living and cannot be viewed as negligence on the part of the landlord. I also find that the tenant has failed to prove that the condition of the weather strips on the steps was as a result of the landlord's negligence. Given the restrictions placed on the landlord by the weather, I find that the landlord acted reasonably in addressing the safety of the stair case.

I find that the tenant's claim for compensation does not meet all the components of the above test.

Conclusion

The tenant has not proven her case and hence the tenant's application for compensation for loss under the Act in the amount of \$1,100.00 is dismissed. The tenant must bear the cost of filing this application.

Dated March 11, 2009.

Dispute Resolution Officer