Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MNDC, RR, MND, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenant made an amended application to cancel a *Notice to End Tenancy for Cause*, for compensation for damage or loss under the Act, regulations or tenancy agreement, for authorization to reduce rent and recover the filing fee. The landlords applied for monetary compensation for damage to the rental unit, unpaid rent, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and confirmed service of hearing documents. Both parties were provided the opportunity to be heard and to respond to the submissions of the other party.

At the commencement of the hearing, the parties confirmed that the tenant has vacated the rental unit. Accordingly, I have not considered the tenant's request to cancel the Notice to End Tenancy and this decision pertains to monetary claims filed by both parties.

Issues(s) to be Decided

1. Has the tenant established an entitlement to monetary compensation from the landlords for loss of quiet enjoyment?
2. Have the landlords established an entitlement to monetary compensation for damage and loss of rent from the tenant?
3. Retention or return of the security deposit.
4. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony, I make the following findings. The tenancy commenced December 2008 on a month-to-month basis. The rental unit was a self-contained furnished suite in the house occupied by the landlords. The tenant was required to pay rent of $800.00 on the 1st day of every month and had paid a $400.00 security deposit approximately two months after the tenancy commenced. On December 1, 2009 the landlord issued a *1 Month Notice to End Tenancy for Cause* to the tenant indicating an effective date of January 1, 2010 and that the tenant had put the landlord's property at significant risk and the tenant had caused extraordinary damage to the rental unit. The tenant vacated the rental unit January 1, 2010. The tenant did not pay rent for the month of January 2010.

The tenant made the following submissions. On November 19, 2009 the landlords issued a letter to the tenant giving her "notice to move out or go back to renting a room" to accommodate their growing family and gave the tenant the choice of moving out January 1, 2010 or February 1, 2010. On November 25, 2009 the tenant noticed a small amount of water on the kitchen floor and placed towels on the floor to mop up the water. On November 26, 2009 the landlord called the tenant while she was out to advise her that there was a flood coming from her rental unit. The tenant came home to discover approximately 2 inches of water on the floor. The landlord told the tenant not to use the washing machine anymore and that this sort of thing had happened before. The landlord later told the tenant she could use the washing machine and then was told she could not use because it continued to leak. The rental unit and the part of the landlord's basement that was flooded underwent restoration work between December 9 through 24, 2009.

In making this application for $1,000.00 in compensation the tenant submitted that the landlords: periodically disconnected her cable; turned off the outside light; falsely accused her of causing the leak in the rental unit, smoking in the rental unit and using space heaters; entered the unit to take pictures; entered her rental unit to bring in

construction materials for the landlord's areas of the basement; left the tenant's entry door off; created loud music in the landlord's basement area on one occasion; called the tenant foul names and threatening to sue the tenant for negligence and damages.

In response to the tenant's application, the landlord's made the following statements: the landlords' were not aware of previous issues with the laundry plumbing; the tenant's cable was jumped off their cable and during the day while repairs were being made the cable had to be temporarily disconnected; the tenant was offered the opportunity to use the landlords' laundry machines and did use their machines on a couple of occasions; the tenant's entry door had to be taken off to accommodate the flood repairs but plywood was installed temporarily; plastic was put up to control dust; the landlord's family was visiting around Christmas time and there was one evening where music was playing loudly until 7:00 pm; the outside light bulb burned out; the landlord does not recall taking pictures of the tenant's carpet. The landlords also submitted that the photographs provided by the tenant were taken before the construction crew cleaned up for the day. The landlords explained that the tenant was inferring with the landlords' ability to make repairs by not permitting them to enter the rental unit for a couple of weeks after the flood.

In making the landlords' application, the landlords are seeking compensation with respect to loss of rent for January 2010 in the amount of $800.00; $500.00 for the insurance deductible and $923.28 for carpet replacement. The landlord submitted that the tenant should be held responsible for the damages related to the flood since the tenant did not notify the landlord of the leak when she first noticed water on the floor on November 25, 2009. The carpet has to be replaced due to damage caused by the tenant unrelated to the flood and the tenant failed to give sufficient notice to end tenancy.

Upon enquiry, the landlords testified that the insurance policy covered replacement carpet in the landlords' area of the basement, drywall repair in the rental unit and the

landlords' basement area and new linoleum was installed in the kitchen of the rental unit. The linoleum was older but the carpet was installed in August 2007.

In response to the landlord's submissions, the tenant testified that she did not know the landlord did not have keys to the rental unit and she denied changing the locks to the rental unit. The tenant also acknowledged that she had accidentally damaged the carpeting and had an estimate of $550.00 to replace it.

Upon further enquiry, the landlords stated that the landlord's family is moving in to the rental unit in March 2010 but that they had vaguely told the tenant that the family would be moving in to the rental unit in the New Year. The landlords explained that there had been other issues with the tenancy and that this was seen as the best way to end the tenancy.

As evidence for the hearing, the tenant provided copies of numerous emails and text messages received from the landlord and sent to the landlord; photographs; carpet replacement estimate, Notice to End Tenancy and chronological account of events. The landlords stated the tenant did not provide all of the text messages between the parties.

In support of the landlord's claim for compensation, the landlord provided photographs, a carpet replacement estimate, evidence of the insurance deductible and an email from the tenant dated December 22, 2009 informing the landlords she would be moving out January 1, 2010. Other emails concerning usage of the landlords' laundry machines, the tenant's boyfriend being on the property and the effective date of the Notice to End Tenancy were also supplied as evidence.

After hearing from the parties, an attempt was made to facilitate a mutual agreement between the parties. The tenant offered to settle the disputes for the amount of her security deposit. The landlords did not accept the tenant's offer.

Analysis

Where a party makes a claim for monetary compensation against another party, the party making the application has the burden to prove the claim. Sections 7 and 67 of the Act provide for awards for compensation and in accordance with those sections, in order for a party to succeed in a monetary award against another party I must be satisfied of the following:

1. The other party violated the Act, regulations or tenancy agreement;
2. The violation caused the applicant to incur damages or loss;
3. Verification of the amount of the damage or loss; and,
4. The applicant did whatever was reasonable to mitigate their damage or loss.

The burden of proof is based on the balance of probabilities. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Under section 28 the Act, the tenant is entitled to quiet enjoyment of the rental unit including reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject to the landlord's restricted right to enter the rental unit. In order for the tenant to establish a breach of quiet enjoyment, the tenant has to show that there was substantial interference with the ordinary and lawful enjoyment of the premises by the landlord. Interference may be demonstrated by various means, including: entering the rental unit frequently or without permission; unreasonable or ongoing noise; persecution or intimidation and intentionally removing services.

It must be noted that temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Further, it is necessary to balance the

tenant's right to quiet enjoyment with the landlord's right to maintain the property and make repairs; however, an award may be made to a tenant for loss of use of a portion of the rental property even if the landlord has made every reasonable effort to minimize the disruption. The amount of an award for loss of quiet enjoyment generally takes into consideration the reduction in the value of the tenancy caused by the breach of quiet enjoyment.

Upon consideration of all of the evidence before me, it is clear to me that the tenancy relationship deteriorated sharply after the flood occurred and the parties were quick to blame the other party for their respective difficulties during December 2009.

I find the landlords were not aware of their rights to enter the rental unit to perform repairs, including emergency repairs, as provided under section 29 of the Act and that this lack of knowledge contributed to the landlords' increasing sense that damage was occurring in the rental unit and that the tenant was precluding them from entering the unit. I do not find sufficient evidence the tenant had changed the locks or otherwise precluded the landlord's from lawfully entering the rental unit had the landlord's given proper notice and exercised their right to enter under the Act.

I find the tenant did not take reasonable action to take advantage of the landlord's offer to use the landlord's laundry machines while hers were not useable. I find the tenant reached a conclusion that the landlords had turned off the outside light when an equally reasonable conclusion would have been that the light bulb was burned out. I did not find the one occasion of loud music in the landlord's unit around Christmas time to constitute a breach of quiet enjoyment as this incident was temporary and not a frequent occurrence.

While it is not in dispute that the tenant's door was removed at times and the cable was disconnected, I am satisfied that this was attributed to the repairs being conducted to the rental unit or the landlord's property and not attributable to retribution by the

landlords. However, I am satisfied that the tenant's right to reasonable privacy and access to cable was diminished during the construction period. I am also satisfied the tenant was the recipient of name calling and accusations by the landlords. Although the landlords claim the tenant did not provide all of the text messages between the parties, the landlords did not produce copies of the communications that would explain the messages sent to the tenant by the landlords.

I did not find sufficient evidence that the tenant misused the laundry machine and caused the water to leak. Rather, I am satisfied that the leak occurred due to a malfunction of the plumbing system. The landlords claim that the flood could have been prevented had the tenant informed the landlords of the smaller water leak observed by the tenant the day before. However, the tenant explained she did not know the cause of the leak and thought that it was minor. I find the landlord's have not sufficiently proven that the tenant knew or ought to have known that a flood was likely or imminent. Therefore, I do not hold the tenant responsible for the flood damage.

Even if I held the tenant responsible for the flood damage, the landlord did not establish that they suffered a financial loss as I heard the landlords have benefited from new kitchen flooring in place of the old linoleum flooring and new flooring in their basement for the cost of the $500.00 insurance deductible.

I do not award the landlords their claim for loss of rent for January 2010 as I did not find the landlord's incurred a loss for that period. The landlords had requested the tenant vacate to accommodate their family either January 1, 2010 or February 1, 2010. Had the landlords issued a proper *2 Month Notice to End Tenancy for Landlord's Use of Property* the landlords would have had to pay the tenant one month of compensation. Further, the landlords claim that their family cannot move in until March because the carpet needs replacement yet the landlords had not yet replaced the carpet. This is indicative of a failure to take every reasonable measure to minimize their loss.

As the tenant acknowledged damaging the carpet, I award the landlords a portion of the replacement cost. I prefer the landlords' evidence of the replacement cost to the tenant's evidence as the landlords' evidence indicated that their estimate is for the same type of carpeting as the damaged carpet. As explained to the parties during the hearing, awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. Carpeting has a normal useful life of 10 years. Accordingly, the landlord has established an entitlement to compensation of $792.48 ($923.28 x 103/120 months).

As the landlords still possess the tenant's security deposit of $400.00 the landlords are entitled to an award for the balance owing of $392.48 ($792.48 – 400.00). However, I offset the landlord's award by $392.48 which I find to be the approximate devaluation of the tenancy due to the tenant's loss of quiet enjoyment of the rental unit.

In summary, I have found the landlords and tenant entitled to an award of $392.48 each and I have offset the awards with the effect that neither party is provided a Monetary Order. The landlord is authorized to retain the security deposit. As I found both parties contributed to these disputes, I do not award the filing fee to either party. This matter is now considered resolved.

Conclusion

The landlords and tenant both established an entitlement to an awarad of $392.48. The awards were offset and neither party was provided a Monetary Order with this decision. The landlord was authorized to retain the tenant's security deposit.

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 26, 2010.

Dispute Resolution Officer