Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Complete Residential Property Management (Agent) & SP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the tenant, her agent and the landlord's agent.

The tenant had arranged for a local police officer to provide testimony relevant to her claim and the officer joined the hearing at the beginning. In an effort to ensure we did not hold up the officer and with the agreement of both parties the witness provided her testimony immediately and both parties were given an opportunity to ask any questions of the witness, at the same time.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the parties on June 22, 2012 for an 11 month and 14 day fixed term tenancy beginning on July 15, 2012 for the monthly rent of $1,495.00 due on the 1st of each month with a security deposit of $747.50 paid. The parties agree the tenant has not stayed in the rental unit since October 20, 2012 and has removed her belongings from the property.

The tenancy agreement contained the following specific clauses:

- Clause 17 – In order to promote the safety, welfare, enjoyment, and comfort of other occupants and tenants of the residential property and the landlord, the tenant or the tenant's guests must not disturb, harass, or annoy another occupant of the residential property, the landlord, or a neighbour. In addition, noise or behaviour, which in the reasonable opinion of the landlord may disturb the comfort of any occupant of the residential property or other person, must not be made by the tenant or the tenant's guests, nor must any noise be repeated or persisted after a request to discontinue such noise or behaviour has been made by the landlord. The tenant or the tenant's guests

must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the residential property or other person at any time, and in particular between the hours of 10:00 p.m. and 9:00 a.m. If any tenant or tenant's guest causes another to vacate his rental unit because of such noise or other disturbance, harassment, or annoyance or because of illegal activity by the tenant or tenant's guest, the tenant must indemnify and save harmless the landlord for all costs, losses, damages, or expenses caused thereby. The landlord may end the tenancy pursuant to the Act as one of his remedies;

- Clause 43 – the tenant agrees to the following material term regarding smoking: smoking of tobacco products only is limited to the area described as outside the house; and
- Clause 44 – Other. Tenant is responsible for basic lawn mowing and weeding. Tenant is to carry full insurance coverage as required to operate a daycare out of the house.

The tenant submits that when she was looking for a rental unit she was specifically looking for something where she could start a daycare and that the landlord's agent convinced her, despite her concerns about running a daycare over another rental unit, that the residential property would meet her needs.

The landlord's agent testified that she had shown the tenant this particular property because at the time both the main floor and the basement unit were vacant and she thought the tenant could rent both spaces to live in the main floor unit and use the basement unit as the daycare.

The tenant rented only the upper unit and the tenancy began on July 15, 2012. The basement rental unit was occupied effective August 1, 2012 with a different tenant. The landlord acknowledges receiving a complaint from the tenant in September 2012 regarding the occupant of the basement unit smoking in his unit. The landlord submits she investigated and could find no evidence that the basement occupant was smoking anywhere other than on his patio, as allowed under his tenancy agreement.

The parties agree the tenant also submitted a written complaint on October 4, 2012 regarding noise disturbances from the basement occupant. The landlord responded by indicating she would look into it and spoke with the basement occupant who complained about noise disturbances from the tenant.

In response to the landlord's update to the tenant regarding her investigation the tenant expressed, in an email dated October 5, 2012 that they were thinking of moving to a new location where it was "a bit more private."

On October 8, 2012 the tenant reported another incident to the landlord in an email that the landlord responded to that she was on vacation and would deal with the issue upon her return on October 11, 2012 unless it was an urgent need and if so the landlord provided the tenant with an alternate contact person. The tenant agreed it could wait until October 11.

On October 12, 2012 the landlord's agent sent the tenant an email advising the tenant that the basement occupant had agreed to move out of his rental unit and that she would have to get the ok from the landlord for the basement tenant to end his tenancy. The email also included a warning to the tenant that even though the current basement occupant would be moving out that other occupants would move in and that the same issues may occur with new occupants.

In an email dated October 15, 2012 the tenant submits that she had re-thought the appropriateness of her rental unit for the purposes of a daycare and had determined that it was not suitable and that she would be moving out, so there was no need for the basement occupant to do so.

In some of her correspondence the tenant submits that the basement occupant is an irrational long-term drug user; a drug-taking alcoholic; she does not trust him, in any way; and she is scared that he will "accumulate angriness to the extent that he explodes or acts irrationally." The landlord in response and in her testimony submits that the basement occupant has been nothing but polite and cooperative in her dealings with him and does not understand the tenant's position.

The tenant submits that on October 20, 2012 after returning from shopping the basement tenant turned his music up loudly and began banging on his ceiling and that he also came to the back door and was yelling at the tenant and her family and banging the door.

The tenant called police who attended to the property. The witness testified that they tenant had reported a disturbance and after they had spoken to the tenant who had indicated to them that she was going to stay in a hotel overnight they spoke with the basement occupant. The witness testified that the basement occupant denied causing any disturbances and the officers left. The witness confirmed that no charges or other actions were taken.

The tenants only returned to the rental unit after that to obtain their belongings and to move them into storage. The tenants did provide the landlord with an email on October 20, 2012 advising the landlord that they would not be returning the rental unit except to retrieve their belongings.

The tenant submits that as a result of the landlord's failure to recognize the severity of the issues with the basement occupant and have the basement occupant either stop his behaviour or end his tenancy the landlord had breached material terms of the tenancy agreement. Specifically, the tenant submits the landlord breached Clauses 17, 43 and 44.

The tenant seeks the following compensation:

Description	Amount
Moving costs (truck rental)	$64.49
Hotel – October 20, 2013	$74.26
Hotel – original claim was $825.00 – tenant amended this amount, during the hearing, as she has been in the hotel for 4 months	$3,300.00
Storage	$287.22
Change of Address and box rental (Canada Post)	$179.56
Compensation for not being able to start her daycare	$846.97
Total	$4,752.50

The tenant also seeks return of her security deposit of $747.50. The landlord submits the tenant did not provide a forwarding address. During the hearing the tenant and her agent confirmed that the address on the tenant's Application for Dispute Resolution, served on the landlord in November 2012 is her forwarding address.

Analysis

With regard to the tenant's claim for compensation from the landlord for not being able to start her daycare, I find that the matter of using the rental property for a commercial purpose is outside of consideration of the *Act*, and I decline jurisdiction on this specific portion of the tenant's claim.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

While the tenant's position is that the landlord breached Clauses 17, 43, and 44 of the tenancy agreement and that these were material terms, I find that these terms are specific to the tenant's behaviour and not the landlord's obligations. For example,

Clause 17 specifies the tenant is not allowed to disturb other tenants or occupants or the landlord but there is no obligation on the part of the landlord specific to this clause.

As such, I find that the landlord cannot breach these terms, as they are written. However, implied in these terms and as required under Section 28 of the *Act* the landlord is required to ensure a tenant receives quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

From the evidence of both parties I find the landlord took reasonable steps to have the basement occupant agree to move out of the rental unit in accordance with her obligations under Section 28 and that she was continuing to pursue this avenue to resolve the issues when the tenant decided to move out anyway.

Despite the tenant's assertion that she was offended by the landlord's agent's email that even if the basement occupant vacated the property the tenant would have to get use to another occupant in the basement unit and that because it was a shared property the parties would need to make compromises, I find the landlord's agent was simply informing her that even if the current occupant vacated, noise transference would not change and both units would need to ensure they didn't disturb the other unit.

In regard to the tenant's position that she would not have entered into the tenancy agreement had the landlord not presented the property as suitable for setting up a daycare, I find the tenant, from her own submission, was aware that there was an additional rental unit in the basement of the property and that she had concerns about entering into such agreement.

Regardless, the tenant entered into the tenancy agreement and as such, I find that she was satisfied that the rental unit would meet her needs for both residential and commercial purposes. She further acknowledges in her evidence that she had lived in a similar situation in another country where she could hear the tenant in the other unit snore. From this, I find the tenant was even aware of the potential noise problems in such a residential property, prior to entering into the tenancy agreement.

Finally, and despite police involvement, I find the tenant has failed to provide any evidence to establish that the basement occupant threatened or was a threat to the tenant or her family sufficient to warrant ending the tenancy, particularly since the landlord had already been working on moving the basement occupant when the tenant advised the landlord that she would be vacating the property, instead.

For these reasons, I find the tenant has failed to provide sufficient evidence to establish that the landlord either breached a material term of the tenancy agreement or violated the *Act* or regulation. As such, I find the tenant has failed to establish that she has suffered a loss or damages as a result of a violation of the *Act*, regulations or tenancy

agreement and therefore I dismiss the tenant's claim for compensation for moving costs; storage; hotel costs; and postal costs.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Despite the landlord's agent's assertion that the tenant had not provided her forwarding address, I find that the tenant's Application for Dispute Resolution, received by the Residential Tenancy Branch on November 28, 2012 clearly outlines a service address for the tenant. I accept the landlord received a copy of this Application and used the address to provide the tenant with their evidence in preparation for this hearing. As such, I find the landlord received the tenant's forwarding address in writing when they received her Application for Dispute Resolution.

Therefore to be compliant with Section 38(1) the landlord would have had to have either returned the tenant's security deposit in full or file their own Application for Dispute Resolution seeking to claim the deposit within 15 days of receiving the tenant's Application for Dispute Resolution. From the landlord's agent's testimony I find the landlord has not yet returned the deposit or filed an Application to claim against it and the tenant is entitled to double the amount of the deposit in accordance with Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **$1,545.00** comprised of $1,495.00 double the security deposit and $50.00 of the $100.00 fee paid by the tenant for this application, as she was only partially successful. This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 06, 2013

Residential Tenancy Branch