



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was originally convened on June 21, 2013, as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking a monetary order for a return of his security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

That hearing was adjourned as the tenant submitted late evidence and the landlord did not want to proceed on that date. An interim Decision was entered on June 21, 2013, which ordered that the hearing be reconvened.

At this reconvened hearing, the tenant and landlord's agent (hereafter referred to as "landlord") appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on September 21, 2010, ended on February 25, 2013, the monthly rent at the end of the tenancy was \$680, and the tenant paid a security deposit of \$325 at the beginning of the tenancy.

The rental unit was 1 of 3 rental units in a single home.

The tenant's monetary claim is \$4780, comprised of a request for his security deposit of \$325, returned, \$325, which is double of his security deposit due to a lack of condition inspection reports by the landlord, \$4080 for loss of his quiet enjoyment for the last 6 months of his tenancy, and the filing fee of \$50.

I note that the tenant requested monetary compensation in his application for dispute resolution in the amount of \$4720; however the tenant said that this was a clerical error.

Security deposit issues-In support of his application seeking a return of his security deposit, the tenant said that he never agreed to any deductions by the landlord; however in spite of this, the landlord retained the amount of \$194.80 and returned the amount of \$130.20. The tenant also contended that he is entitled to having his security deposit doubled as the landlord failed to conduct a move-in or move-out inspection and to provide condition inspection reports.

In response to my question, the tenant said that he provided the landlord his forwarding address via text message, and shortly thereafter, the landlord returned a portion of his security deposit.

In response, the landlord said that she did receive the tenant's forwarding address via text message in early March.

Both parties agreed that their method of communication with each other was via text message.

Loss of quiet enjoyment-The tenant contended that for the entire tenancy he endured excessive noise from the other tenants in the residential property and that despite many, many consistent complaints, the landlord failed to take any action to address these complaints. The noise included excessive loud music, partying and loud talking late into the night on a continual basis. The tenant submitted that his work and his peaceful enjoyment of his rental unit suffered as the result of the constant loud noise.

The tenant made the complaints via text message, and he was then informed by the landlord that he could not make any complaints after 11:00 p.m.

The tenant submitted that instead of the landlord addressing his complaints about noise from the other tenants, the landlord text messaged him with warnings, and then ultimately attempted to evict him through a text message.

The tenant submitted that in addition to issues with extreme noise, late at night, the other tenants were smoking, with the smoke coming into his rental unit and that the fire department was called due to food left burning by another tenant.

The tenant also submitted that another male agent of the landlord threatened the tenant and called him profane names.

The tenant submitted that in addition to the landlord not affording the tenant his rights to quiet enjoyment, the landlord failed to provide a written tenancy agreement or receipts for rent payments.

The tenant further submitted that the original monthly rent was \$650 and that the landlord suddenly increased the monthly rent to \$700 in August 2012. When the tenant questioned the amount, the landlord allowed for a decrease, to \$680 per month.

In response, the landlord contended that there were no noise issues, as confirmed by her phone calls to the other tenants after receiving a noise complaint from the tenant. In explanation, the landlord said that when she called the other tenants after receiving a complaint by this tenant, she did not hear any noise on the other tenants' end of the telephone line. The landlord further stated that she just basically asked the other tenants if they were noisy and they said no.

The landlord said that she received up to 50 calls or text messages from the tenant and that she finally asked him to move out.

The landlord disagreed with the tenant's statement of the rent increase, saying that the tenant paid \$700 in July 2012, then he paid \$650 in August, September and October 2012, then \$680 per month for the rest of the tenancy.

In response, the tenant agreed with the landlord's statements of the monthly rent payments.

Analysis

Based upon the oral and written relevant evidence and a balance of probabilities, I find as follows:

Return of the security deposit-

Under section 38 of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit.

In the case before me, the tenant communicated his forwarding address in a text message transmission. I accept that this method of communication was the preferred method of communication between the parties, as demonstrated by both parties' oral evidence.

Although the Act does not recognize text message transmission as an acceptable method of delivery of documents, I order that the delivery of the tenant's forwarding address through a March text message to the landlord, with the landlord's agreement that she did receive the text message, sufficiently served, pursuant to section 71 of the Act. Although the tenant was unclear of the exact date of the text message, the landlord confirmed that it was on March 6, 2013; additionally, the documentary evidence showing a partial payment of the tenant's security deposit was dated March 6, 2013.

As the tenancy ended on February 25, 2013, and the landlord received the tenant's forwarding address on or before March 6, 2013, the landlord had 15 days from March 6, 2013, to either file an application for dispute resolution claiming against the security deposit or to return the security deposit in full, less any authorized deductions. I find in this case there are no authorized deductions.

Instead of returning the tenant's security deposit in full, the landlord made a deduction prior to returning a portion, in contravention of the Act.

Therefore, I find that the landlord is not entitled to retain any portion of the security deposit, and under section 38 I must order the landlord to pay the tenant double his security deposit.

I therefore find the tenant is entitled to a monetary award of \$519.80, comprised of his security deposit of \$325, doubled to \$650, less the amount of \$130.20 previously returned to the tenant.

Loss of quiet enjoyment-

Section 28 of the *Act* states that a tenant is entitled to 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 the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

A breach of quiet enjoyment includes when a tenant's right to enjoy their premise in peace and without unreasonable disturbance. Temporary discomfort or inconvenience does not constitute a breach of a tenant's quiet enjoyment; however, substantial interference or ongoing disturbances can constitute a breach of a tenant's right to quiet enjoyment. Ongoing and unreasonable noise could result in the loss of a tenant's right to quiet enjoyment.

A landlord is required to balance and protect the rights of each tenant. While a landlord would normally not be held responsible for the actions of other tenants, a landlord must take reasonable steps to address and correct a situation where the landlord is aware that one tenant is unreasonably disturbing another tenant.

Section 47 of the *Act* provides that a landlord may end a tenancy by issuing a one month Notice to End Tenancy for Cause. One of several grounds that can be identified as a basis to end a tenancy is the ground that the tenant has significantly interfered with or unreasonably disturbed another occupant.

From the evidence provided by the tenant, and undisputed by the landlord, I am satisfied that there have been multiple noise complaints to the landlord. I find the evidence supports that the tenant sent multiple text messages to the landlord, for at least the final 6 months of the tenancy, as stated by the tenant and undisputed by the landlord.

I also do not find it reasonable that the landlord concluded that the noise complaints were not valid after a phone call to the offending tenant as I find it likely that the noise ceased temporarily while the tenant answered the phone.

I find that in taking only the steps of calling the offending tenants and not providing any investigation or visiting the premises, the landlord has not taken any appropriate and reasonable steps to address the concerns and complaints of the tenant; rather the evidence provided shows that the response by the landlord to the tenant's noise complaints was to take steps to have the tenant move or be evicted from the rental unit.

I therefore find that the landlord failed to provide the tenant with his right to quiet enjoyment for at least the last 6 months of the tenancy.

With respect to the tenant's request for monetary compensation for a loss of his quiet enjoyment and a subsequent devaluation of their tenancy, as I have found that the landlord's lack of taking corrective steps have led to the tenant's loss of quiet enjoyment, I find it reasonable that the tenant is entitled to compensation for a devaluation of his tenancy.

Residential Tenancy Policy Guideline 6 states the determination of the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation and the length of time over which the situation has existed.

Additionally the arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises.

I find on a balance of probabilities that due to the ongoing, frequent noise disruptions from the tenants in the two other suites despite the tenant's requests to the landlord and the landlord's failure to take action, that the tenancy has been devalued. I find a

reasonable amount of compensation for that devaluation from noise and sleep disturbance to be \$200 per month, from September 2012 through February 2013, the end of the tenancy.

I therefore find the tenant has established a monetary claim of \$1200 (\$200 for each September, October, November, and December 2012, and January and February 2013) for a loss in the value of the tenancy for those months.

Return of overpaid rent-Although the tenant in his written summary sheet outlining his monetary claim did not make a specific claim for a return of rent overpaid, the tenant in his evidence and application clearly sought remedy for the overpayment.

Under section 42 of the Act, a landlord may not impose an additional rent increase unless a tenant is given appropriate notice in the approved form.

Section 43 states that the tenant is entitled to recover the increase if the landlord fails to comply with the Act in increasing the rent.

In the case before me, the undisputed evidence shows the tenant's monthly rent was \$650 and that the landlord increased the monthly rent by demand to the tenant, not by issuing the tenant a notice on the proper form. As the landlord contravened this portion of Act I find the tenant is entitled to recover the overpayment of rent.

The parties agreed that the tenant paid \$700 in July, which represents a \$50 overpayment. The parties agreed that the tenant paid \$680 for November and December 2012, and for January and February 2013, which represents an overpayment of \$30 each of those months, or a total of \$120. I therefore find, pursuant to section 62 of the Act, that the tenant is entitled to monetary compensation of \$170, comprised of the rent overpayments.

I also find that the tenant's application had merit and I therefore award him recovery of the filing fee of \$50.

Due to the above, I find the tenant is entitled to a total monetary award of \$1939.80, comprised of \$519.80 for compensation for the return of his security deposit, doubled, \$1200 for his loss of quiet enjoyment, \$170 for rent overpayment, and the filing fee of \$50.

Conclusion

The tenant's application is granted in part as I have found that he is entitled to monetary compensation in the amount of \$1939.80.

I grant the tenancy agreement final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1939.80, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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* and is being mailed to both the applicant and the respondent.

Dated: August 6, 2013

Residential Tenancy Branch

