



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, LRE, MNDC, OLC, RSF, RP

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on December 27, 2013. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for emergency repairs?
- b. Whether the tenant is entitled to an order for repairs?
- c. Whether the tenant is entitled to an order that the landlord provides services or facilities required by law/
- d. Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?
- e. Whether the tenant is entitled to an order for the reduction of rent for repairs, services or facilities agreed upon but not provided?

- f. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?

Background and Evidence

The tenancy began on July 15, 2013. The rent is \$850 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$425 on July 15, 2013. The rental unit is the lower floor of a home in which the landlord occupies the upper floor.

There is a significant amount of animosity between the parties. The landlord's application for an order for an early end to the tenancy was dismissed in a hearing that was held on December 27, 2013. The arbitrator who heard the application recorded in his decision that the tenant intends to move out. The tenant moved out of the rental unit on January 15, 2014.

Application for emergency repairs, repairs, that the landlord provide services or facilities required by law and for an order suspending the landlord's right to enter:

As the tenant has vacated the rental unit I determined a consideration of the claim for emergency repairs, repairs, that the landlord provide services or facilities required by law and an order suspending the landlord's right to enter is moot and accordingly those claim are dismissed.

Application for a monetary order and an order reducing the rent:

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$850 plus monetary compensation for loss of access to the laundry room and a reduction of the rent. Briefly, the tenant's evidence is as follows:

- The tenant testified the landlord failed to make repairs in a timely fashion to the toilet which constantly kept running and to the bathtub faucet which failed to shut off. The landlord attempted to fix the toilet in October but failed to do so and the problem got worse causing water damage to the floor.

- The tenant testified the landlord and his family has caused unreasonable noise disturbances. The landlord has two daughters who are of university age. She testified that the daughters clopped around with heels on at all hours of the day or night.
- The tenant further testified that the landlord would do laundry late at night which interfered with their enjoyment of the rental unit as the washer and dryer was in the basement close to the bedrooms. Further, in December the landlord denied her access to the laundry room.
- The tensions between the parties escalated. The police were called. The tenant testified that the landlord's family would yell and scream at her in the presence of her 12 years old daughter.
- The landlord failed to remove the garbage in a timely manner.

The landlord disputes much of the tenant's evidence and testified the tenant is not being truthful. He testified the tenant tampered with the breakers. She also harassed his family. He denies that anyone from his family put high heels on at night. He denies that he intentionally attempted to force the tenant to leave. He also denies failing to remove the garbage in a timely manner.

Law

Policy Guideline #6 provides as follows:

"Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

It is necessary to **balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises**, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it. A landlord would not be held responsible for interference by an outside agency that is beyond his or her control, except that a tenant might be entitled to treat a tenancy as ended where a landlord was aware of circumstances that would make the premises uninhabitable for that tenant and withheld that information in establishing the tenancy.”

Analysis

There are problems with the evidence presented by both parties. The tenant has made a number of accusations against the landlord but she has failed to provide sufficient particulars as to when the events took place, how often they took place, the duration of the events and how severe the events were.

The landlord's evidence is also problematic. Many of the allegations involved alleged conduct of the landlord's two university age daughters. The daughters did not appear or give evidence in any form.

Despite the problems with the evidence an arbitrator must do the best he/she can in the circumstances. I determined the complaints of the tenant relating to the failure of the landlord to repair the toilet and bathtub faucet have not been proven. The landlord denies these allegations. The tenant failed to provide photographs or other evidence that would corroborate her evidence.

However, I determined based on the evidence presented that the landlord's family unreasonably disturbed the tenant and breached the tenant's right to quiet enjoyment. There is insufficient evidence to establish that the landlord attempted to force the tenant to leave. However, I am satisfied that the landlord's daughters continued to make

excessive noise late at night over an extended period. I am satisfied the landlord was told that their conduct was disturbing the tenant and that the daughters continued with this conduct. In the circumstances I determined the tenant is entitled to compensation in the sum of \$200. I am also satisfied the landlord denied access to the laundry facilities and the tenant is entitled to \$22 for this claim.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$222.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

The landlord alleged the tenant failed to properly clean and has damaged the rental unit. The landlord must first file an Application for Dispute Resolution before those claims can be considered.

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: February 12, 2014

Residential Tenancy Branch

