



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, ET, MNR, MNSD, SS, FF
 Tenants: MNDC, MNSD, OLC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession; a monetary order and an order for substitute service. The tenants sought a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the tenants. I note that at the outset of the hearing the agents for the landlord informed me the male tenant had recently passed away. With the agent's agreement I amended the Application's before me to exclude the male tenant from any orders in this decision.

The tenants' agents did not provide testimony regarding the service of hearing documents and evidence from the tenants to the landlord in relation to the tenants' Application for Dispute Resolution.

However, I note this hearing was originally scheduled based on the landlord's Application for Dispute Resolution and the landlord provided documentary evidence and a written response to the tenants' Application, including a copy of the Notice of Hearing documents provided from the tenants to the landlord based on their Application.

As a result, I find the landlord was sufficiently served with the tenants' Application for Dispute Resolution and hearing documents pursuant to Section 71(2)(b) of the *Residential Tenancy Act (Act)*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order to serve documents to the tenants in a manner not allowed under the *Act*; an order of possession for unpaid rent; to an order of possession to end the tenancy early and without notice; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 56, 67, 71, and 72 of the *Act*.

It must also be decided if the tenants are entitled to a monetary order for compensation for the loss of quiet enjoyment; for return 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 28, 38, 67, and 72 of the *Act*.

Background and Evidence

The tenants' agents submitted that the tenancy began on October 1, 2016 for a monthly rent of \$1,200.00 due on the first of each month with a security deposit of \$600.00 paid. The written submissions from the tenants states that the tenants vacated the rental unit on October 29, 2016 and removed all of their possessions by October 30, 2016.

The submissions of the tenants are that for the first 3 weeks of the tenancy they did not hear anything upstairs. On October 23, 2016 a framed mirror had fallen and caused damage to a glass table. The next day the, tenants submit, the landlord told them they do too much laundry. On October 25, 2017 the female tenant went to find that a load of washing had been turned off.

The parties continued to have a dispute over the ability to do laundry and the landlord began "pounding her heels on the floor when she walked. After a few hours the male tenant went up to ask her to stop and submitted that he was told by the landlord to leave her property.

The tenants assert the landlord had turned off access to their Wi-Fi and television. From October 27, 2016 to October 29, 2016 the tenants submit the landlord continue to make noises including dropping objects on the floor above and keeping the stereo high. The police were called on the 27th and the second time they came the landlord's stereo was so loud the officer had raise his voice to be heard. As the noise continued the next day the tenants contacted police and they were advised that they should leave the rental unit.

The tenants stayed 3 days in a local hotel for a total cost of \$295.55. The tenants seek only this amount for compensation.

The tenants provided a copy of a letter dated November 5, 2016 addressed to the landlord which provided the landlord with the tenants' forwarding address (their daughter's address). I note also that on November 14, 2016 the landlord submitted her Application for Dispute Resolution using the tenants' daughter's address.

Analysis

In the absence of the applicant landlord I dismiss all of the claims made in the landlord's Application for Dispute Resolution without leave to reapply. This includes both claims for orders of possession; compensation for any lost revenue or unpaid rent; to retain the security deposit; and to serve documents in a manner that is not allowed under the *Act*.

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 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: 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 the use of common areas for reasonable and lawful purposes, free from significant interference.

Based on the undisputed submissions of the tenants I am satisfied that the landlord has violated her obligations under Section 28 of the *Act* by not providing the tenants with quiet enjoyment. I find the actions of the tenants to remove themselves from the rental unit and stay elsewhere to be a reasonable response to the landlord's actions.

However, because of the need to stay elsewhere, I find the tenants have suffered a loss and that loss is directly a result of a loss of quiet enjoyment of the rental unit. I find the value of the costs to stay in a hotel for 3 nights has been established by the tenants through the submission of their banking statements.

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.

Based on the tenant's evidence of their letter dated November 5, 2016 and the landlord's Application being submitted on November 14, 2016 I accept the landlord filed their Application within 15 days of the end of the tenancy and receipt of the tenants' forwarding address.

However, by failing to attend this hearing to diligently pursue her claim to the security deposit, I find the landlord's Application for Dispute Resolution was made as an abuse of the process, pursuant to Section 62(4)(c) of the *Act*. As a result, I find the landlord's failure to attend this hearing has the same effect as if she had never made her Application in the first place.

Therefore, I find the landlord has failed to comply with the requirements set forth in Section 38(1) and the tenants are entitled to double the amount of the security deposit pursuant to Section 38(6) of the *Act*.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,595.55** comprised of \$1,200.00 double security deposit; \$295.55 compensation for loss of quiet enjoyment and the \$100.00 fee paid by the tenants for this application.

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: May 18, 2017

Residential Tenancy Branch