



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on October 26, 2021 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenant G.W., the Tenant's Counsel V.C., and the Landlord attended the hearing at the appointed date and time and provided affirmed testimony. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find the above mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The original hearing was held on June 2, 2022 and adjourned as we ran out of time. The reconvened hearing took place on October 17, 2022 and was adjourned as we once again ran out of time. The second reconvened hearing took place on February 16, 2023 and concluded at the one hour mark.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Are the Tenants entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on May 4, 2020. Rent in the amount of \$4,000.00 was due to the Landlord on the first day of each month, as well as a security deposit was paid in the amount of \$2,000.00. A tenancy agreement between the parties was submitted in support.

The Tenant seeks compensation for the Landlord's "repeated and egregious violations" of the Tenant's right to quiet enjoyment of the rental property, calculated as 50% of the monthly rent over the term of the tenancy (50% x \$4000 x 15 months).

The Tenants submit the following;

The rental property is a rural property consisting of a house which was rented by the Tenant and a separate workshop building all located on approximately 6 acres of land. The Tenants' position is that the lease is for the entire property. The property is enclosed by a fence, in which there is a front gate that that can be unlocked by an electronic PIN pad. The gate opens to a driveway that leads directly to the rental unit and is visible from the house.

The Tenants submit that at the time the parties entered the tenancy agreement, the Landlord verbally advised the Tenants that the Landlord would be storing products in the workshop and that perhaps once or twice a week customers would come to the rental property to pick up products from the workshop. According to the Tenants, they were advised that these trips would take 15 minutes maximum, and that notice would be provided to the Tenants, and that these trips would only take place with the Tenants' permission. The Tenant stated this was a verbal agreement.

Soon after moving in, the Tenants discovered that the Landlord's incursions onto the rental property far exceeded what was agreed to verbally in frequency, duration, and severity. The Tenants maintained a record of each time the Landlord or their customers attended the property without notice. The Tenant provided a detailed account of dates, times, pictures, and description of each attendance.

The Tenant stated that sometimes the Landlord would spray-paint furniture from the workshop, releasing paint fumes that would permeate the air around the rental unit and force the Tenants to stay inside and keep the windows and closed. Other times, unknown people would enter through the front gate by entering the PIN code given to them by the Landlord with large delivery trucks to pick up or deliver cargo from the workshop. This was all done without the consent of the Tenants.

The Tenant stated that throughout the tenancy, the Landlord dumped waste materials and household refuse in a dumpster on the rental property. On September 1, 2020 the Tenant sent an email to the Landlord protesting the dumping of refuse on the rental property. No response was received, and the Landlord continued to dump refuse on the property without the Tenants' consent. On September 4, 2020, the Tenant sent a letter to the Landlord through his counsel requesting a stop to unauthorized entries and proposing a resolution by way of an addendum to the Agreement clarifying the Landlord's rights to entry to the rental property. No response was ever received.

The Tenants claim that the Landlord connected the workshop to the natural gas line of the rental property, which the Tenants were paying for. The Tenant stated that they never received any payments from the Landlord in respect of gas usage, and continued to pay the entire gas bill, including the portion consumed by the Landlord at the workshop.

The Tenant stated that in the spring of 2021, the Landlord placed several shipping containers on the rental property without the Tenants' permission. The Landlord also dumped various large pieces of refuse on the rental property, such as old boilers, without the Tenant's permission. The Tenant stated that they raised these and other complaints to the Landlord in an email dated May 26, 2021. The Landlord did not provide a response or remedy the situation complained of. The Landlord also hosted multiple parties on the rental property with numerous family and friends without the Tenants' consent. These parties involved barbecues, drinking, and music, and lasted multiple hours.

In response, the Landlord submits the following;

The Landlord stated that it was made clear to the Tenants at the start of the tenancy that the workshop located on the rental property was not included in the rent and that the Landlord had exclusive use of the workshop for work purposes. The Landlord referred to the rental advertisement that the Tenants had responded to which states in part "Shop on property is not included in the rental".

The Landlord stated that there was no discussion regarding the Landlord's access to the workshop. The Landlord stated that while there is one gate which provides access to the property, there are two separate driveways, one to the rental unit, and the other to

the workshop. The Landlord provided pictures of the layout in support. The Landlord clarified that they have not entered the rental unit, and have only accessed the workshop.

The Landlord stated that they had exclusive use of the workshop and only provided the Tenants access to the workshop to retrieve the Landlord's lawnmower, which they permitted the Tenants' use of to maintain the rental property. The Landlord stated that the Tenants never made use of the lawnmower, nor did they maintain the rental property.

The Landlord stated that there was a shared garbage bin located beside the workshop for the Tenants and the Landlord to use. The Landlord stated that the material they discarded were not hazardous and there was no contamination to the property.

The Landlord stated that the Tenants never transferred the Gas bill into their name, therefore, the Landlord continued to pay for gas services at the rental property, despite the Tenants' assertions that they were paying for the gas used for heating the workshop. The Landlord provided a confirmation letter from Fortis Gas in support.

The Landlord stated that their attendances to the workshop were reasonable for work purposes and that they did nothing to interfere with the Tenants. The Landlord stated that the workshop is approximately 62 feet from the rental unit and that there is a grove of trees between the two structures. The Landlord stated that the workshop is only visible from one window in the rental unit, which is where the Tenants took all their pictures from. The Landlord stated that the Tenants were never disturbed by the Landlord or their customers and that they kept to themselves.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenants, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the

Act. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

Section 28 of the *Act* provides that a Tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. Residential Tenancy Policy Guideline 6 further discusses the right to quiet enjoyment and provides that:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

Residential Tenancy Policy Guideline 6 also sets out that;

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

The Tenant seeks compensation for the Landlord's "repeated and egregious violations" of the Tenant's right to quiet enjoyment of the rental property, calculated as 50% of the monthly rent over the term of the tenancy (50% x \$4000 x 15 months). The Tenants

submit that they rent the entire rental property, however, also indicate that they had a verbal agreement with the Landlord around the Landlord's access the workshop located on the rental property. The Landlord disagreed that the workshop is part of the tenancy, and that the parties did not have any verbal agreement surrounding access.

In this case I find that it is more likely than not that the rental agreement between the parties does not provide the Tenants exclusive use of the workshop. I find that the Tenants did not have access to the workshop aside from their ability to borrow lawn equipment that was being stored in the workshop. I find that the Landlords were entitled to use the workshop for their own use.

I find that the Landlord was not required to notify the Tenants each time they would attend the workshop. I find that the workshop is a separate structure from the rental unit and that the Landlord did not enter the rental unit to access the workshop. I find that the Landlord did not breach the Act by entering the workshop.

With respect to the Landlord's attendances to the workshop, I find that the Tenant provided insufficient evidence to demonstrate that the Landlord or their customers driving up the driveway to access the workshop constitutes frequent and ongoing interference or unreasonable disturbances. I find that it is reasonable for the Landlord to use the entry way which splits into two driveways to reach their workshop.

I find the Tenants have provided insufficient evidence to demonstrate that the Landlord's activities in the workshop impacted their quiet enjoyment of the rental unit, nor do the materials the Landlord discarded in the appropriate garbage bin constitute a breach.

While the Tenants claimed that the Landlord connected into their Gas line to provide heat for the workshop, I find that the Landlord provided sufficient evidence to demonstrate that the Tenants did not transfer the Gas bill into their names, therefore, would not have paid the gas bills during the tenancy.

I further find that the Tenants provided insufficient evidence to demonstrate that they suffered a loss as a result of the Landlord placing bins along the side of their workshop for work purposes or that the Landlord held parties at their workshop.

I find that the Tenants could have mitigated their loss by applying for Dispute Resolution should they feel as though the Landlord was breaching the Act or the tenancy

agreement. I find that by waiting until after the tenancy has ended to submit a monetary claim for all the issues throughout the tenancy does not demonstrate mitigation.

I dismiss the Tenants' Application in its entirety without leave to reapply.

Conclusion

The Tenants' Application is dismissed without leave to reapply.

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 16, 2023

Residential Tenancy Branch