



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MDNC and FF

Introduction

This application was brought by the tenants seeking return of one-half of their rent for the duration of the tenancy, an amount totaling \$18,700, for loss of quiet enjoyment of the rental unit. The tenants had also sought to have set aside a Notice to End Tenancy for cause served January 6, 2009; however, as the tenants had moved on January 31, 2009, that part of the claim was moot.

Issue(s) to be Decided

This application requires a decision on whether the tenants have proven that they suffered a loss of quiet enjoyment of the rental unit of sufficient degree to warrant return of a portion of the rent.

Background and Evidence

The applicants moved in to the rental on March 1, 2006 and moved out January 31, 2009, two years and 10 months later. Rent was \$1,100 per month throughout the tenancy and the landlords held a security deposit of \$550 paid on February 20, 2006.

On January 11, the landlords served the tenants with a Notice to End Tenancy for landlord use as the property had been sold.

The landlords also submitted a copy of the sale agreement including a clause that required them to deliver the rental property with vacant possession.

The tenants submitted into evidence a lengthy list of grievances, for the most part pertaining to noise disturbances from the landlords upstairs, often coincident to family visits to the landlord.

The tenants submitted one very courteous letter to the landlord complaining of noise and the landlord's equally courteous reply apologizing, promising to try to keep the noise down and inviting the tenant to communicate their concerns any time.

The tenant attending stated there had been other letters but copies had been lost when her computer was stricken with a virus. She stated that the noise disturbances had been constant throughout the tenancy.

The landlords submitted a sworn declaration noting the tenants' complaints and the fact that they also were frequently disturbed by noises, including a loud television, from the tenants' basement suite.

Analysis

While section 28 of the *Act* entrenches the right of tenants to quiet enjoyment of the rental unit, section 7 of the *Act* imposes a duty on both landlords and tenants to do whatever is reasonable to minimize loss.

I find that the tenants' claim to the effect that the enjoyment of tenancy was extremely diminished by noise disturbance is contradicted by the tenants conduct in remaining in the rental unit for nearly three years and moving out only after receiving Notice to End Tenancy.

Conclusion

I find that by delaying taking any action on the noise complaints for nearly three years, the tenants have failed to take reasonable actions to minimize their claimed loss. Therefore, this application is dismissed without leave to reapply. As the tenants claim has not succeeded, they remain responsible for their own filing fee.

During the hearing, the parties were reminded that tenants moving out on a Notice to End for landlord use are entitled to receive the last month's rent free. The landlords stated they had not been able to do so as the tenants had not provided a forwarding address. The tenant provided they address at the hearing and the landlord promised to return the January rent.

February 11, 2009

Dispute Resolution Officer