



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act(Act)*, regulation or tenancy agreement.

The tenants' served the landlord by registered mail on or about April 12, 2010 with a copy of the Application and Notice of Hearing. The landlord confirmed receipt of these documents.

One of the tenants and the landlord and his wife appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

Are the tenants entitled to a Monetary Order for compensation for loss or damage due to a loss of quiet enjoyment of their rental unit?

Background and Evidence

Both Parties agree that this tenancy started on January 17, 2008. This was a fixed term tenancy which was due to expire on January 31, 2010. The tenants ended the tenancy on July 01 or 02, 2009. The Parties have had previous issues which have been dealt with at a hearing held in August 2009 and a hearing held in March, 2010.

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The tenant attending testifies that during their tenancy there was construction going on at the property and the construction workers did not have their own bathroom so the tenants allowed them to make use of the facilities in their rental unit.

The tenant also states that because of the construction work they suffered problems with their sewage backing up onto the construction site. She states this happened every other day for two weeks. The construction workers also shut off the tenant's power for whole mornings approximately every third of fourth day over a period of a week and a half. The tenant states they made attempts to contact the landlord but he did not respond.

The tenant claims the landlord continually walked around the property and stood outside on the road and in the alley staring into the property for minutes each time. The tenant states she did not challenge the landlord about what he was doing but did keep a written account. The tenant states they sent two letters to the landlord asking him to stop these actions one in June 2008 and one in August, 2008. The tenant states on one occasion the landlord was looking over their five foot gate into her yard and the gate is about seven feet from the mailbox so the landlord should have no reason to look over the gate.

The tenant states her mother (the other tenant) would go to the landlords home to pay her rent but did not ask the landlord why he looked into their property while she was there. The tenant states she felt the landlords' actions to be disturbing and felt their privacy was being invaded. The tenant states the landlord could not see into the front window of the house because she had sheers up at the window. The tenants seek the equivalent of one months' rent to compensate them for this loss of quite enjoyment.

The landlord disputes the tenant's claims. The landlord testifies that when the tenants applied to rent the house they were made aware that construction would be going on at the property and they signed an agreement to this affect. The landlord states the tenants were aware that interruptions to their water and power supply would be inevitable due to this construction and warning letters were given to the tenant's concerning this before it happened. The landlord

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states it was the tenant's choice to allow the construction workers to use their bathroom facilities and it was not by the request of the landlords.

The landlord testifies that he and his wife lived across the street from the tenant's rental unit. The landlord explains that every time he walked up or down the street or was out walking his dog the tenants wrote this down. The landlord testifies that he did not stare at the tenant's house and if he was walking down the street towards their house he would simply be looking in that direction as he walked. The landlord testifies that the alley is an area they have always walked their dog and is not part of the tenant's property. The landlord claims as he was having construction done at the property he would occasional pass by to check on the construction work. The landlord states the mailbox is approximately four feet from the gate not seven as the tenant suggests and as he is well over six foot tall the tenant could have thought he was looking over the gate when he delivered a rent receipt into the mailbox.

The landlords' wife testifies that the street and alley were their normal walking areas with their dog. She recalls an occasion when they were in the tenant's yard, with their permission, and a few days latter they received a nasty letter from the tenant asking them not to enter her yard or her alley.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

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Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission;
- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights;
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

I find that temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment with regard to issues with the sewage and loss of power. The tenants were aware of the construction prior to signing their tenancy agreement and because the landlord notified the tenants of these temporary losses in service I find the tenants were not significantly inconvenienced over an extended period of time.

With regard to the workers using the tenant's bathroom facilities I find this was the tenants own choice to allow this if they were unhappy about this then they should have told the construction workers to make alternative arrangements.

With regard to the tenant's claim that over a period from January 2008 to May, 2009 the landlord has invaded their privacy by continually walking by their house and staring into it. When a tenant's evidence is contradicted by the landlords' evidence the tenant will generally need to provide additional, corroborating evidence to satisfy the burden of proof. While the tenant has provided a list of dates when she claims the landlord was looking into her property and one



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letter sent to the landlord asking him to stop looking into their house. If a landlord does live across the road from the tenants and has always used the road and alley to walk his dog or when going to the local shops there is no basis in the tenants complaint that he was looking into their property and there is nothing that suggests the landlord was persecuting or intimidating the tenants. Consequently in the absence of any corroborating evidence, I find that the tenants have not provided sufficient evidence to support this aspect of their claim.

Conclusion

The tenant's application for a Monetary Order for \$1,200.00 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: August 18, 2010.

Dispute Resolution Officer