



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC; OLC; FF; O

Introduction

This is the Tenants' application for a monetary order for compensation for damage or loss; for an order that the Landlord comply with the Residential Tenancy Act(the "Act"), regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The Tenants gave affirmed testimony at the Hearing.

The Tenants testified that they mailed the Landlord the Notice of Hearing documents by registered mail, on June 29, 2010. The Tenants provided the registered mail receipt in evidence.

I am satisfied that the Landlord was duly served with the Notice of Hearing documents in accordance with the provisions of Section 89(c) of the Act. Despite being served with the Notice of Hearing documents, the Landlord did not sign into the teleconference and the Hearing continued in its absence.

Issues to be Decided

- Are the Tenants entitled to a monetary order in compensation for damage or loss, and if so, in what amount?

Background and Evidence

The Tenants gave the following testimony:

Monthly rent was \$1,400.00 per month. There was a written tenancy agreement, a copy

of which was entered in evidence. Under this agreement, the tenancy started on July 1, 2009, and ended on July 31, 2010. Despite repeated verbal and written requests for a copy of the tenancy agreement, the Landlord did not provide the Tenants with a copy of the tenancy agreement until June 24, 2010. The Tenants moved out of the rental unit on July 15, 2010.

The tenancy agreement was a one year lease and ended on a date certain without the option of continuing on a month-to-month basis, a fact that the Tenants did not recall and did not realize until June 24, 2010, when they were finally provided a copy of the lease. The Landlord's onsite manager resigned at the end of May and a new manager stepped in.

From the beginning of the tenancy, the Tenants experienced unreasonable noise from the tenant who lived directly above them (the "other tenant"). The other tenant was playing loud music, which could be heard clearly by the Tenants and disrupted their sleep. Initially, they attempted to deal with the problem directly with the other tenant by writing to her and asking her to place her speakers off the floor or muffling the noise in another fashion. When these attempts failed, the Tenants called the building manager and complained in March, 2010. On or about the 3rd week in March, the building manager stopped one of the Tenants as he was leaving for work at 7:15 a.m. The building manager advised the Tenant that he had investigated the complaints and determined them to be unfounded. He told the Tenant that the noise was coming from other suites in the building.

On April 13, 25 and May 13, 2009, the Tenants placed calls to the building manager to try to address the ongoing problem and were met with verbal abuse and profanity from the building manager.

The noise persisted from the other tenant's suite, so the Tenants wrote to the building manager on May 14, 2010 to complain about their loss of peaceful enjoyment due to the other tenant's actions. On May 23, 2010, the Tenants met with the building manager,

who told them personal things about the other tenant, which made them feel uncomfortable. He stated that the other tenant was getting over difficulties in her life and was merely "living life". The building manager asked the Tenants how they were going to deal with it and stated that in situations like this, it was not necessarily the offending tenant who would be evicted. At that point, the Tenants realized that the building manager was justifying the noise from the other tenant and that he was not going to support them in trying to reach a solution. The noise persisted from the other tenant's rental unit.

On June 15, 2010, the Tenants mailed the new building managers a letter complaining again about loud music coming from the other tenant's suite on June 5, 2010 (10:15 p.m. to 11:45 p.m.) and throughout the evening on June 11, 2010. The noise on June 11, 2010, was so loud it caused the Tenants' picture frames to vibrate. In the letter, the Tenants included a copy of the documented record of the Tenants' noise complaints over the period of the tenancy. There was no response from the new building managers.

On July 12, 2010, the Tenants sent an e-mail to the new managers complaining that the other tenant was pounding on their door late at night. There was no response from the new managers regarding their e-mail. On July 15, 2010, the Tenants were advised by the new managers that they were giving the upstairs tenant another chance because they knew that the Tenants were moving out.

The Tenants kept records of the noise occurrences and are seeking a monetary award of \$5,000.00 for loss of peaceful enjoyment; lost wages due to having to pack, move and hunt for new accommodations (\$1,800.00); to recover the cost of moving expenses in the amount of \$700.00; and paying rent twice for the period of July 15 to July 31, 2010. The Tenants testified that they currently pay \$1,800.00 a month in their new accommodations.

Analysis

Copies of all the letters provided to the other tenant and the building managers were entered in evidence. Based on the undisputed testimony of the Tenants and the documentary evidence provided by the Tenants, I am satisfied that the Landlord, or its agent, was initially provided with written notice the Tenants' noise complaints on May 14, 2010. I am also satisfied that the Landlord's agent (the first building manager) was aware of the ongoing noise problem as early as March, 2010. I accept the Tenants' testimony that the building manager's response to the Tenants' complaints was that the other tenant was not responsible for the noise, and that later the manager stated that the other tenant was "enjoying life" and that it would not necessarily be she who would be evicted.

I accept the Tenants' testimony that the new building managers did not attempt to provide the Tenants with peaceful enjoyment of the rental unit and chose to ignore the Tenants' complaints because the Tenants were moving out.

Section 28(b) of the Act requires a landlord to provide a tenant with quiet enjoyment including freedom from unreasonable disturbance. I find that the Landlord did not comply with Section 28(b) of the Act, and award the Tenants compensation in the amount of \$300.00 per month for the months of March (when the Landlord's agent first became aware of the Tenants' complaints) to and including July, 2010., for a total of \$1,500.00.

The Tenants did not provide sufficient evidence to support their claim for compensation for lost wages; moving expenses; or paying rent twice for the latter part of July, 2010.

The Tenants have been partially successful in their claim and are entitled to recover the cost of the filing fee from the Landlord.

Conclusion

I hereby grant the Tenants a Monetary Order in the amount of \$1,550.00 against the Landlord. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and 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: August 30, 2010.

Dispute Resolution Officer