



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenants CNC, OLC, FF

For the landlords – OPR, OPC, MNR, MNDC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together. The tenants seek to cancel the One Month Notice to End Tenancy; they seek an Order for the landlord to comply with the Act and to recover their filing fee.

The landlords seek an Order of Possession for cause, a Monetary Order for unpaid rent or utilities, a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover their filing fees. At the outset of the hearing it was determined that the landlords have not served the tenants with a 10 Day Notice to End Tenancy for unpaid rent or utilities and they have withdrawn their application for an Order of Possession based on this.

I am satisfied that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties 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 cancel the One Month Notice to End Tenancy for cause?

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- Are the tenants entitled to an Order for the landlord to comply with the Act?
- Are the landlords entitled to an Order of possession based on the One Month Notice to End Tenancy?
- Are the landlords entitled to a Monetary Order to recover unpaid utilities?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both Parties agree that this tenancy started on June 01, 2010. This is a fixed term tenancy which is due to expire on June 01, 2011. Rent for this unit is \$1,450.00 per month and is due on the first of each month. The tenants paid a security deposit of \$725.00 on May 18, 2010.

The landlord states the tenants have not paid their utility bills despite numerous requests for payments. The landlords also testify that the tenants have caused a great deal of disturbance at the rental unit with their children, their surround sound system and doing laundry late at night. The landlords also state the tenants have entered the area allocated to the downstairs tenants and disturbed them during a family meal. The landlord served the tenants with a One Month Notice to End Tenancy for cause however this has not been presented as evidence by either Party but the tenants agree they did receive it. The landlords testify that the reasons given on this notice are that the tenants are repeatedly late paying utilities and the tenants have engaged in an illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.

The landlords state that they have not given the tenants a copy of the utility bills or a demand for payment of them. The landlords state that they had a tenant living in the unit below these tenants and they gave notice to move out because of the noise from the tenants unit upstairs.. The landlords testify that they re-rented the unit to a new tenant in August, 2010 but she only stayed for one month due to the noise levels from the tenants unit above. The landlord has provided letters from these tenants detailing the disturbances. One tenant wrote concerning the noise from the tenants three small children with screaming, crying, thumping and heavy running

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footsteps. The other tenant wrote with similar noise issues from the children and complained about the tenants doing laundry late at night, noise from the surround sound system and the upstairs tenants cutting through her private area while she had company.

The landlords seek to recover the sum of \$2,550.00 in lost rental revenue for the lower unit due to the tenant's noise which has prevented the landlords keeping their tenants or re-renting the unit again.

The tenants testify that they have always been willing to pay their share of the utility bills and have simply asked the landlords for a copy of the bills to determine what their share is. The tenants agree that they must pay two thirds of the utility bills and will do so when the landlords have given them copies of the bills.

The tenants claim that the landlords were aware they had three children under four years of age when they rented the unit. The tenants claim this is a normal house construction with no sound proofing between the units. When they were invited into the downstairs unit they found that there was just a suspended ceiling and floor joists with no insulation to prevent sound transferring. The tenant agreed that he could hear his children's footsteps as they walked across the floor. The tenants state with three small children it has been a time of adjustment for them moving into a new home and one of the children has been teething so there has been issues late at night with crying and screaming. The tenants explain that on one occasion a neighbour out of concern for the children called the police because she could hear a child screaming. When the police came they were sympathetic to the tenants.

The tenants claim that they can hear the downstairs tenants through the vents as the landlords have not insulated the property correctly. The tenant disputes that they do laundry late at night he claims there was one occasion when the dryer was on at night and he had a conversation with the downstairs tenants about it and complied with their wishes to not use it again at night. The tenants address the landlord's statements about walking through the downstairs tenants' private area; and explains it was where the recycling was kept and they had to go through the tenants areas to access it. They state the downstairs tenant was happy about it at the time.

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The tenants state they wish to have the Notice cancelled but still wish to move from the rental unit by October 01, 2010 as they feel they can no longer continue to live there with this conflict. They would like the landlords to help them with their moving costs as they feel they have to move out through no fault of their own.

The tenant's dispute the landlords claim for \$2,550.00 as they state the landlord has not complied with the city regulations regarding the rental units and have not insulated the units to prevent the transfer of noise.

During the course of the hearing the landlords and tenants have come to the following agreement:

- The tenants will move from the rental unit on or before October 01, 2010.
- The landlords agree to accept the mutual end to the tenancy without requiring the tenants to give them further notice.
- The tenants agree to pay any outstanding utility bills upon presentation of the Bills to them.
- The tenants agree to leave the rental unit in the same condition it was when they rented it.

The tenants seek an Order for the landlord to comply with the *Act* with regard to entering the garage and moving their belongings. They also request the landlords change the lock on their front door which the downstairs tenants are able to open with their garage key. The tenants also seek an Order for the landlords to comply with the *Act* with regard to providing them with a copy of each utility bill.

The landlords testify that they did enter the garage to move the tenants belongings and also removed their belongings from the area next to the hot tub as despite numerous requests the tenants had not removed their belongings from these areas. The landlord's state as these are not areas that are part of the tenants rental agreement they are entitled to enter them.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. As the parties have reached a mutual agreement on some of their dispute I will only address the remaining issues in my analysis and make a decision regarding these issues.

With regard to the landlord's issues concerning compensation for the loss of revenue, I find the landlords have not complied with section 32 of the Act which states a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant. It is my decision that the landlord has not ensured the units are suitable for occupation by these tenants because of the lack of sound proofing and in regard to their claim for compensation they have not taken any steps to mitigate their loss in this matter. For example, after the first tenant moved from the unit the landlords could have taken preventative action in sound proofing the two units to prevent or reduce the transference of noise. Consequently, I find the landlords are not entitled to compensation from the tenants for this loss of rental income and this section of their claim is dismissed.

With regard to the tenants claim for an order for the landlord to comply with the Act, I find as the tenants have agreed to move from the rental unit by October 01, 2010 this would not give the landlord sufficient time to organize and install sound proofing between the units. I also find the garage space and area around the hot tub are not designated as sole use for these tenants and therefore the landlord would be entitled to access these areas. However, I would caution the landlord about moving the tenant's belongings without permission or without an Order to do so. With regard to the change of locks; as there are no other tenants in the rental unit at this time and the tenants have agreed to move out no further orders will be issued regarding the locks. However I would caution the landlord again to ensure the garage key used by the downstairs tenants does not fit the upstairs units lock when the unit is re-rented

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Conclusion

Both Parties have reached an agreement during the hearing and this agreement has been recorded by the Dispute Resolution Officer pursuant to section 62 of the *Act*.

As an agreement has been reached concerning the tenants vacating the rental unit; The One Month Notice to End Tenancy is cancelled.

The remainder of the landlords claim is dismissed without leave to reapply.

The remainder of the tenants claim is dismissed without leave to reapply.

As both parties have reached a mutual agreement and the remainder of their applications have been dismissed I find both parties must bear the cost of filing their own applications.

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: September 22, 2010.

Dispute Resolution Officer