



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside notices to end this tenancy and a monetary order. Both parties participated in the conference call hearing.

The hearing was held over two days as the conference call on the first date was abruptly terminated due to a server error. Both parties participated in both dates of the hearing and were able to present their evidence.

Issues to be Decided

Should the notices to end tenancy be set aside?

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The following facts are not in dispute. The tenancy began on July 1, 2010, although the tenants did not reside in the unit throughout most of the month of July as they were out of the province. The rental unit is located on the upper two floors of a home in which the lower floor is occupied by other tenants, J.L. and A.T. The home is a heritage home, almost 100 years old with hardwood floors throughout with the exception of the kitchen, which is tiled. The tenants have two children, ages 5 and 8. On or about September 25 the landlords served on the tenants a notice to end tenancy alleging that they had significantly interfered with or unreasonably disturbed another occupant or the landlord. On or about October 7 the landlords served on the tenants a second notice to

end tenancy which alleged that in addition to significantly interfering with or unreasonably disturbing other occupants, the tenants had engaged in illegal activity that has or is likely to damage the landlord's property, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and jeopardized a lawful right or interest of another occupant or the landlord. Hereinafter these notices are referred to collectively as the "Notices." The landlords lived in the rental unit when their child was not yet walking and after they vacated, other tenants who also had a child who was not yet walking lived in the unit immediately prior to the commencement of this tenancy.

The landlord testified that the basement suite is a legal suite, built to code with all the required soundproofing having been installed between the suite and the rental unit. He stated that there is no shared ducting apart from one cold air return to the furnace room. The landlord stated that he has received numerous complaints from the occupants of the basement suite about noise. The landlord asked them to document their complaints and attempted to minimize the disturbance by providing an area rug for the living room of the rental unit and placing foam underlay in the entryway and hallway of the home in an effort to dampen the noise. The basement suite occupants reported that the underlay made little or no difference and the landlord stated that he was unwilling to install carpeting or a runner on the stairs when he had no assurance that it would reduce the noise to an acceptable level. The landlord claimed that either or both of the tenants were operating a business out of the home and the landlord P.K. claimed that he could not insure the home if the tenants operated a business without a business license. The landlord K.K. testified that she had not checked with the insurance company and did not know how a home business would affect their insurance.

J.L. and A.T. testified that they hear noise regularly in the mornings and evenings and described the noises as jumping, thumping, running, stomping and temper tantrums. Both occupants testified that while they heard other noises, such as voices and coughs, they did not find those noises disturbing. The occupant A.T. testified that the light fixtures occasionally rattle from the thumping and running. Both A.T. and J.L. testified

that they had not been disturbed by noise when the landlord or the previous tenant had resided in the rental unit.

The tenants testified that upon receiving the noise complaints, they made efforts to reduce the noise made by their children, asking them to play on the upper floor and preventing them from running or jumping in the house. The tenants denied that their children have an unusually high number of tantrums. The tenants alleged that the landlord falsely advertised the home as a “great family home” when in fact noise transference between the two suites is so high. The tenants acknowledged that they do some work from home but that they do not see clients in their home.

The tenants seek a monetary order for \$5,700.00, which is equivalent to 3 months rent. The tenant took the position that the landlord should have known that the rental unit was not suitable for a family, that they incurred expense and inconvenience moving to the unit and would have to move again incurring further expense and inconvenience.

Analysis

The landlord bears the burden of proving that there are grounds to end the tenancy. I do not accept that the tenants working from home is an illegal activity or that it is likely to void the landlord's insurance. The landlord provided no evidence to corroborate his claim that his insurance would be invalid and further provided no evidence to corroborate his claim that a business license was required for any degree of work performed from the home.

As for the noise complaint, the occupants of the basement suite knowingly moved into a multi-family dwelling. Regardless of whether the suite is legal and has been soundproofed, they must expect some degree of noise transference. If they were residing in a concrete building it would be reasonable to expect that noise transference would be minimal. They cannot reasonably expect the same insulation from noise given the age and character of the home in which they have chosen to live. Absent a specific term in their tenancy agreement which promised that occupancy of the rental unit would be restricted to adults, the occupants of the basement suite should have reasonably

expected the possibility that mobile children may at some point occupy the upper portion of the home which has 3 bedrooms.

I accept that the tenants' children make noise as all children do. However, it is clear from the communication which has gone back and forth between the parties that the tenants were acutely aware of the impact their daily lives had on the occupants of the lower suite. I find that the tenants made reasonable efforts to minimize the noise made by their children, going so far as to curtail ordinary activities in the rental unit. I am not persuaded on the balance of probabilities that the tenants' children make more noise than would be expected of other children of similar ages nor am I persuaded that considering the age and character of the home, the noise transference can be characterised as a significant or unreasonable disturbance.

For these reasons I order that the Notices be set aside and of no force or effect. As a result, the tenancy will continue.

I note that at the hearing the tenants' advocate stated that the situation was likely no one's fault. I heartily agree with this conclusion. The landlord had not experienced mobile children living in the rental unit and clearly was not aware of the degree of noise which could be transferred to the basement suite by the ordinary, daily activities of young children. The tenants appear to have been equally unaware of the possibility of disturbance. While the landlord does not have grounds to end the tenancy, it seems unlikely that the tenancy can continue happily and the parties are encouraged to consider a mutual agreement to end the tenancy.

As for the tenants' monetary claim, as noted above, I find that due to their inexperience with young children in the rental unit, the landlords were unaware that this unit may not be suitable for families with young children. In order to establish an entitlement to compensation, the tenants must prove that the landlord has violated the Act, Regulation or tenancy agreement and that this violation caused them to suffer a loss. Alternatively, the tenants must prove negligence on the part of the landlord. I find that the tenants have failed to prove that the landlord committed such a violation or was negligent.

Rather, this is a situation in which despite the desire of both parties for the living arrangement to work, it simply did not. While I appreciate that the tenants will bear additional expenses should they decide to vacate the unit, I can find no basis within my jurisdiction under which the landlord should be made to bear part or all of those expenses. The monetary claim is therefore dismissed.

Conclusion

The Notices are set aside and the monetary claim is dismissed.

The tenants paid a \$100.00 filing fee because their claim exceeded \$5,000.00. Had they restricted their claim to disputing the Notices, the filing fee would have been just \$50.00. I find that the tenants are entitled to recover just \$50.00 of the filing fee as their monetary claim was unsuccessful and I award the tenants \$50.00. This sum may be deducted from future rent owed to the landlord.

Dated: November 16, 2010

Dispute Resolution Officer