Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, LAT, FF, O

Introduction

This matter dealt with an application by the Tenants for compensation for damage or loss under the Act or tenancy agreement, for the return of a security deposit, for an Order permitting the Tenants to change the locks to the rental unit and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Landlords claimed that they had not received copies of photographs that the Tenants submitted as evidence at the hearing. The Tenants said they thought they had mailed the photographs to the Landlords but could not be certain. I find that there is insufficient evidence that the Landlords were served with copies of the Tenants' photographs and they are excluded pursuant to RTB Rule of Procedure 11.5(b).

Issues(s) to be Decided

1. Are the Tenants entitled to compensation and if so, how much?
2. Are the Tenants entitled to the return of their security deposit?
3. Are the Tenants be permitted to change the locks to the rental unit?

Background and Evidence

This tenancy started on August 1, 2010 as a 6 month fixed term tenancy however, the Parties amended their agreement on November 30, 2010 to change it to a month-to-month tenancy. Rent is $850.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of $425.00.

The Tenants claim that commencing in mid-September 2010 and continuing to date, they have put up with an unreasonable amount of noise coming from a neighbouring suite, #119. In particular, the Tenants claim that the neighbouring tenants' sub-woofer makes loud booming noises on common wall of their suite and that the Landlords have failed to take reasonable steps to address it.

The Tenants said that they first heard the noise on or about September 14, 2010 but did not initially complain. The Tenants said the noise became a daily problem however and

often persisted for 6 hours at a time until it became unbearable. The Tenants also claimed that the neighbouring tenant frequently operated power tools on his balcony which contributed to the noise disturbances. Consequently, the Tenants said on September 16, 2010, they made a complaint to the Landlord (M.L.) who is the building manager. The Tenants said they could hear M.L. yell from the parking lot to the neighbouring tenant (who was on his balcony) that she had received a complaint and asked him to turn his stereo down. The Tenants claim that despite making this complaint, the noise from the sub-woofer and the power tools continued for several more days so they left telephone messages for M.L. and the Landlord (E.J.) who is the property manager about the noise.

The Tenants said that on one occasion in September 2010, they asked M.L. to come to their unit to hear the noise for herself but instead she went to the neighbouring unit at which time the booming noise stopped. The Tenants said M.L. then came to their unit and advised them that the neighbouring tenants did not have their music turned up loud. The Tenants said they tried to explain to M.L. that it was not the volume of the music that was disturbing them but rather the noise created by the sub-woofer but she did not believe them. The Tenants said they left another message for E.J. on this day and again on October 1, 2010 about the noise but he did not return their calls.

In frustration, the Tenants said they moved D.L.'s bedroom to the living room area and used her bedroom as the living room. The Tenants said they also advised the Landlords that they wanted to change their tenancy agreement to a month-to-month agreement because they believed they might have to move if the Landlord was not going to take any steps to address their complaints. The Tenants said they also gave their neighbouring tenants a letter advising them about the disruption the noise from the sub-woofer was having on them. The Tenants said one of the neighbouring tenants promised them that they would move the sub-woofer but within a day or two the pounding noise resumed (only further down the same wall).

The Tenants said they again contacted M.L. about the noise and she came to their unit speaking on a walkie-talkie to one of the neighbouring tenants who was on the other walkie-talkie. The Tenants said M.L. claimed at one point that she could hear the noise but then claimed that she could not hear it when turned down although both of the Tenants claimed that they could still hear it. The Tenants said M.L. ignored their comments and left. The Tenants said they did not feel that M.L. was taking their concerns seriously and later overheard her yelling to the neighbouring tenant on his balcony making light of their complaints. J.H. claimed that on one occasion, he overheard one of the neighbouring tenants ask M.L. in the hallway "if the b*tch was complaining again."

The Tenants said they then applied for dispute resolution to deal with the problem. In a hearing held on November 5, 2010, M.L. agreed to ask the tenants in 119 to disconnect their sub-woofer. In reliance on this information, the Tenant, D.H. said she moved her bedroom furnishings back into the bedroom however, the noise from the sub-woofer continued and she ended up returning the bedroom furnishings to the living room area a few weeks later. The Tenants said they started giving M.L. written complaints each time there was a noise disturbance as recommended by the Dispute Resolution Officer during the hearing on November 5, 2010. The Tenants said they also started calling the police and by-law officers about the noise and they attended on approximately 6 occasions and spoke with the neighbouring tenants. The Tenants claimed, however, that the neighbouring tenants would turn down the noise when they saw the police arrive.

The Tenant (D.L.) said that the constant booming noise caused her stress and anxiety which resulted in migraine headaches, eczema and irritable bowel syndrome. The Tenant J.H. corroborated D.L.'s evidence regarding the effect the noise had on her and claimed that he too had been startled awake a number of times by the loud booming of the neighbour's sub-woofer coming through his bedroom wall.

The Landlord, M.L., claimed that when she received the Tenants' first noise complaint she could not hear any noise in the hallway outside of the rental unit but advised the tenants of 119 of the complaint anyway. The Landlord, M.L. said that she also investigated after receiving the Tenants' second complaint and in particular tried to find out what would be a tolerable level at which the occupants of 119 could play their stereo. M.L. said she believed this would solve the problem because the noise level seemed fine in the rental unit at that time. M.L. said that after the Tenants gave the neighbouring tenants a letter, they moved their stereo to another wall. M.L. said she did not receive any noise complaints from the time the Tenants gave her their hearing package (in early October 2010) until the hearing date on November 5, 2010.

M.L. said the tenants in 119 agreed to unplug their subwoofer on November 5, 2010 and she believed that they had. M.L. said she continued to get complaint letters from the Tenants about the noise after this date but was told by the tenants of 119 on November 23, 2010 that they had not been using the sub-woofer. M.L. said she was aware that the police and by-law enforcement officers had attended the rental property as a result of the Tenants' complaints about the noise. M.L. admitted that she had not returned to the rental unit since September 2010 to investigate the Tenants' continuing noise complaints but claimed that she heard no noise in the hallways (other than voices coming from various units) and no other tenants had complained.

The Landlords claimed that they took reasonable steps to investigate the Tenants' complaints but could find no evidence of the noise. Consequently, the Landlords argued there was nothing more they could do.

Analysis

Section 38(1) of the Act says that a Landlord is not required to return a Tenant's security deposit until 15 days following the end of the tenancy or the date the Tenant gives the Landlord their forwarding address in writing (whichever is later). As the tenancy has not ended, I find that the Tenants' application for the return of their security deposit is premature and it is dismissed with leave to reapply.

Section 28 of the Act says (in part) that a tenant is entitled to quiet enjoyment including but not limited to freedom from unreasonable disturbance and exclusive possession of the rental unit subject only to the landlord's right to enter in accordance with s. 29 of the Act.

In this case, the Tenants claim their right to quiet enjoyment has been breached by the Landlords' failure to deal with persistent and unreasonably loud noises coming from the neighbouring suite. In support of this claim, the Tenants provided a list of dates and times during which they say the noises occurred as well as copies of complaint letters to the Landlords and a list of police file numbers relating to when the police were called to investigate noise by-law infractions. The Landlords claim that they took reasonable steps to investigate the Tenants' complaints but found no evidence of the alleged noise.

I find on a balance of probabilities that the Tenants' noise complaints were legitimate. In particular, I am persuaded by the Tenants' act of documenting the date and time of each occurrence, by seeking a remedy through dispute resolution and following that hearing, documenting further occurrences by way of complaint letters to the Landlord immediately after each occurrence. I also find that the Landlords did not take adequate or reasonable steps to investigate the Tenants' complaints. In particular, the Landlord, E.J., admitted that he did not return the Tenants' calls but instead asked M.L. to deal with them. E.J. claimed that he tried to accommodate the Tenants by amending their tenancy agreement so they could move out. M.L. admitted that she had gone into the Tenants' suite on only one occasion to see if she could find a tolerable level at which the neighbours could play music. M.L. said she believed that if there was any noise in the rental unit, it would be audible from the hallway. M.L. admitted however, that this type of investigation would have occurred the day after she received a written complaint.

I find it unreasonable that despite the Tenants' notifying the Landlords that there was a serious problem that was making them reconsider whether they could live in the rental unit any longer, the Landlords would not take further steps after September 2010 to attend the rental unit to investigate the Tenants' complaints. Consequently, I find that the Tenants are entitled to compensation for a loss of quiet enjoyment for the months of October, November and December 2010 in the amount of $425.00 per month for a total of **$1,250.00**. I make no award for September 2010 as I find that this was the only time that the Landlords did take steps to investigate the Tenants' complaints.

The Tenants also sought compensation of $150.00 for each month that they had to use the living room as a bedroom and one of the bedrooms as a living room. I find however that the Tenants did not lose the use of any of the rental unit due to the noise. Any inconvenience to the Tenants from having to change the use of rooms would fall under the category of breach of quiet enjoyment for which they have already been compensated. For similar reasons, I find that there are no grounds for awarding the Tenants $80.00 to move furniture from the living room to the bedroom. Consequently, these parts of the Tenants' claim are dismissed without leave to reapply.

In their application, the Tenants also sought aggravated damages of $1,500.00 for "pain and suffering." In particular, the Tenant, D.H., claimed that her medical conditions were aggravated by the constant stress and anxiety of the ongoing loud noises. However, D.H. provided no medical evidence to show that those conditions were aggravated during the tenancy. Furthermore, RTB Guideline #16 – Claims in Damages describes "aggravated damages (in part) as follows at p. 3:

> "These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering."

I also find that there is insufficient evidence that the Landlords acted wilfully, recklessly or indifferently to the Tenants' mental distress and as a result, this part of the Tenants' claim is dismissed without leave to reapply.

The Tenants further sought compensation for moving expenses. The Tenants did not provide any invoices or other documentary evidence in support of this claim however they estimated that it would cost them $200.00 to reconnect their utility accounts and $900.00 to hire a moving truck and movers. I agree with the Landlords that there is insufficient evidence to support this part of the Tenants' claim. Furthermore, I find that the Tenants would eventually incur these expenses whether the Landlords breached the Act or not and as a result, I find that the Tenants are not entitled to recover those

amounts. Consequently, the Tenants' claim for moving expenses is dismissed without leave to reapply.

The Tenants also sought an order permitting them to change the locks to the rental unit. No oral evidence was given at the hearing regarding this matter, however, in the Tenants' written submissions they claim that on December 1, 2010, they arrived home to find an interior door locked. The Tenants said this concerned them because they never locked this door because they had no key to it. The Tenants said they suspected that the Landlord, M.L. may have entered the unit without their knowledge or consent because when they asked her for a key she told them to enter the room through an open window. In any event, based on this evidence, I find that there is insufficient evidence to support this part of the Tenants' application and it is dismissed with leave to reapply if there are further incidences.

I find that the Tenants are entitled pursuant to s. 72(1) of the Act to recover from the Landlords the $50.00 filing fee for this proceeding. Consequently, I find that the Tenants have made out a total claim for $1,300.00.

Conclusion

A Monetary Order in the amount of **$1,300.00** has been issued to the Tenants and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia.

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: January 05, 2011.

Dispute Resolution Officer