

DECISION

Dispute Codes: MNDC, RR and FF

Introduction

This application was brought by the tenants on February 4, 2011 seeking a monetary order for \$2,000 for loss or damage under the legislation or rental agreement, comprised of loss of facility and diminishment of quiet enjoyment.

The hearing was originally scheduled for hearing on February 14, 2011 but was adjourned as the landlord had not had sufficient time from service to consider a response to the application.

In the interim, the landlord has issued a Notice to End Tenancy for landlord use effective April 30, 2011 to accommodate a sale of the property. The tenants subsequently gave notice under section 50 of the *Act* to end the tenancy on March 31, 2011.

The parties understand and agree that the tenants are eligible for a payment from the landlord equivalent to one month's rent under the compensation provided under section 51 of the *Act*.

In addition, the tenants' application had included a claim for loss of facility due to problems with the dishwasher but that matter was remedied when the landlord replaced the five year old appliance with a new one.

Issues to be Decided

The remaining issue to be decided is whether the tenants are entitled to an award from diminishment of quiet enjoyment due to disturbance and the alleged failure of the landlord to clean up after her dog.

Background and Evidence

This tenancy began on November 1, 2010 under a six-month fixed term agreement and will end on March 31, 2011 pursuant to the Notice to End Tenancy for landlord use. Rent is \$1,250 per month and the landlord holds a security deposit of \$625 paid on November 1, 2010.

During the hearing, the tenant gave evidence that he and his wife and six year old child had been disturbed by noise from the landlord upstairs from the beginning of the tenancy. He stated that his wife must rise at 5 a.m. daily and the disruption to her sleep had resulted in her need to take sleep medication and the child frequently been awakened by the noise. On one occasion, he stated that he had called police at 3 or 4 a.m.

The landlord stated that she had made every effort to reduce the disturbance, even vacating her own bedroom, and installing gates so her pet dog would not be free to walk over her tenants' sleeping area.

She said that, in almost every instance, any noise complained of by the tenants had been normal household activity and customarily ended by 10:30 p.m. She stated that the constant complaining by the tenants had caused her blood pressure to rise to an alarming degree and that it had been the deciding factor in her listing the house for sale.

The landlord said the tension had risen to a degree where she felt she could not have guests in her own home and had recently put her granddaughter up in other accommodation because she did not want to expose her to the stressful environment.

The tenant further noted that the landlord had been careless in cleaning up after her dog which made coming and going very unpleasant. The landlord stated that she cleaned up after the dog daily except for about 10 days during which there was considerable snow on the ground.

The landlord stated that she had agreed in December with the tenants' request to be relieved of the obligations of the fixed term agreement to end the tenancy earlier but that they had not followed through which the tenant attributed to the difficulty to finding suitable accommodation within their school area.

Analysis

Clearly, given the distress that both parties have experienced during this tenancy, it appears to be that the imminent end of the tenancy is the best possible outcome.

As to the tenants' claim for loss of quiet enjoyment, *Residential Policy Guideline 6* includes "unreasonable and ongoing noise" as among the causes that may justify a claim in loss of quiet enjoyment.

In large part, I find that the disturbances caused by the landlord were reasonable and took place at reasonable hours that she made reasonable efforts to respond to the tenant's concerns, although it appears at times she may have been elusive in not answering their calls. The tenant stated that on the night he called police, the landlord delayed in admitting them. Taking into account an apparent degree of intransigence on the part of both parties that contributed to the escalation of this dispute, I find that the tenants did suffer some degree of loss of quiet enjoyment.

I set the quantum of that loss at \$50 per month and award the tenants a total of \$250 for the five months of the tenancy. I further find that the tenants are entitled to recover the filing fee for this proceeding from the landlord.

Conclusion

The tenants have established that they suffered a degree of loss of quiet enjoyment and are awarded \$250 for that loss plus recovery of the \$50 filing fee for this proceeding.

The tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, in the amount of \$300 for service on the landlord.

March 11, 2011