



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC, FF

Introduction

This hearing dealt with the Tenants' application for a Monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act"), for an order requiring the Landlord to comply with the Act, regulations or tenancy agreement by way of ensuring the Tenants' right to quiet enjoyment and recovery of the filing fee.

The Tenants and Landlord KY appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Preliminary Issue:

Landlord RW requested an adjournment of this hearing prior to the hearing due to a medical appointment, to which the Tenants agree on the condition that the hearing be reconvened by July 5, 2011. Due to scheduling of hearings for Dispute Resolution Officers far in advance, this condition could not be met.

In considering the Landlord's request for an adjournment, I am guided by Residential Tenancy Branch Rules of Procedure 6.

In assessing whether an adjournment request should be granted the following criteria can be considered pursuant to rule 6.4:

- whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

I have denied the Landlord's request for an adjournment of this hearing as I find that the attending Landlord had all the information and testimony necessary to protect the Landlords' interest. The absent Landlord is the owner of the building and the attending Landlord is the resident property manager, who was more familiar with the Tenants' dispute. I find that the absent Landlord would not have been able to significantly contribute enough information so as to warrant an adjournment.

Issue(s) to be Decided

Are the Tenants entitled to a monetary order for damage or loss under section 67 of the Act under, for an order requiring the Landlord to comply with the Act, regulations or tenancy agreement and to recover the filing fee?

Background and Evidence

There was no written tenancy agreement entered into evidence; however I heard testimony that this month to month tenancy began in December 1998, that the monthly rent began at \$690.00 and that current monthly rent is \$806.00, which includes \$30.00 for parking and that the Tenants paid a security deposit of \$345.00 at the beginning of the tenancy.

The rental unit is one of eight in a building built approximately in the 1970's, the Tenants are on the second floor of three floors and the Tenants are in the rental unit directly below the Landlord's unit.

The Tenants' monetary claim is as follows:

Claim item	Amount	Evidence provided
Rent and utilities, 3 mnths.	\$2,700.00	Cheques and bills
Expenses while away from home	\$400.00	Restaurant and cafe receipts
Sleep aid items	\$75.00	Drug store receipts
Time, efforts and expenses to research new apt.	\$1,500.00	Estimate for researching
Travel to the city	\$500.00	BC Ferries and fuel examples
Mail, parking and telephone	\$300.00	Post office
Total	\$9,475.00	
Total claim reduced by Tenants	\$5,000.00	

The relevant testimony provided by the Tenants indicated that since the Landlord has moved into the unit directly above theirs, in February 2011, their quiet enjoyment has been disrupted by the Landlord's heavy footsteps and what appears to be moving noises.

The Tenant stated that these footsteps were unusually loud and disruptive, as if the Landlord was stomping around the rental unit, and that the noise occurred usually at night and early morning. The noise also caused the Tenants' windows to rattle. The Tenant described the walking as in a staccato fashion.

The Tenant stated that the building was very cheap with little sound proofing, which is why the flooring in the Landlord's unit should have been replaced with carpet and not the laminate flooring which was put in.

The Tenant submitted that she has asked the building's owner and the Landlord on numerous occasions if the Tenant could walk more quietly, but to no avail.

The Tenant stated that the Landlord had promised to move into another unit in another building, but failed to follow through with this.

The Tenant submitted that the Tenants have lost sleep, time from work due to fatigue and the loss of the use of their home due to the constant heavy footsteps and moving of items late at night. The Tenants stated that it was necessary to stay at their secondary home until this matter can be resolved.

In response, the Landlord stated that he weighs 60 kgs., and denies that he walks with heavy footsteps. The Landlord stated that he has put rugs on the floors to dampen the sound as well as he and his wife using slippers to walk around the unit.

The Landlord stated that he and his wife are very humiliated by the Tenants' accusations and that they do not do dishes or flush the toilets after midnight so as to not disturb the Tenants.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants' Application for a monetary order in the amount of \$5,000.00, relates to their claim for loss of quiet enjoyment.

Section 32 of the *Act* requires a landlord to 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, makes it suitable for occupation by a tenant.

The covenant of quiet enjoyment “promises that the tenant...shall enjoy the possession and use of the premises in peace and without disturbance.” In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant’s right to freedom from serious interferences with his or her tenancy. Section 28 of the *Residential Tenancy Act* establishes rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy,
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord’s right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

I find the Tenants have not proven that they have suffered a loss of their quiet enjoyment. In reaching this conclusion, I was persuaded by the Tenants’ testimony that they knowingly reside in a building which they described as “very cheap” with “not much sound proofing.” Therefore they cannot expect that they would hear no noise from upstairs. Further, there was disputed verbal testimony concerning the level of noise complained of by the Tenants, which does not satisfy the burden of proof. Therefore due to insufficient proof, I find the Tenants failed to prove their loss.

I accept that there is noise coming from the upstairs rental unit, but I am not satisfied that the Tenants’ evidence and testimony rise to the level which would prove they have suffered a loss of their quiet enjoyment, given the age and character of the building.

As to the Tenants’ claim for research and ferry travel, I find the Tenants have failed to provide sufficient evidence to hold the Landlord responsible for these choices made by the Tenants.

As to the Tenants’ claim for the registered letter for the provision of notice of this hearing to the landlord, the *Act* does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee.

As I find the Tenants did not lose their quiet enjoyment of the rental unit, they did not substantiate the remaining portion of their monetary claim. I therefore dismiss the Tenants’ Application in its entirety, without leave to reapply.

As the Tenants’ Application is dismissed, I decline to award the filing fee.

Conclusion

The Tenants’ application is dismissed, without leave to reapply.

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: June 28, 2011.

Residential Tenancy Branch