



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the tenants for monetary compensation for loss under the Act. One tenant, an agent for the landlord and three witnesses for the landlord participated in the teleconference hearing.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began in October 2009 and ended in March 2011. The monthly rent was \$1100. On October 14, 2009, the tenants paid a security deposit of \$550. The tenant has claimed \$5000 in compensation for loss of quiet enjoyment during the tenancy, being forced to move out of the rental unit due to the actions or inactions of the landlord, and the act of the landlord in entering the rental unit without notice before the tenancy had ended and changing the locks.

The evidence of the tenants was as follows.

Since the tenants moved into the rental unit in October 2009, they began experiencing noise from the neighbours below, in unit 120. On several occasions the tenants contacted the building manager, JR, who would phone the downstairs tenants and ask them to reduce the noise. After a few months, JR told the tenants that she wanted to evict the downstairs tenants, and she asked the tenants to write a letter about the disturbances caused by the downstairs tenants. The tenants decided they did not want to do so, because the next tenants may be even worse.

The tenants downstairs began to have more frequent and noisier parties, and the tenants continued to call JR with their complaints. Each time JR would encourage the tenants to "just write the letter."

The tenants in unit 118 also began to create substantial disturbances, moving back and forth between units 120 and 118, creating "drunken noise" and continually slamming the back gate. The tenants were being disturbed every weekend, and at least twice a week on weekdays, often very late at night.

On February 4, 2011, the tenants downstairs had "an evening of intense partying," and the police attended. At that time, the tenants decided that they would write their complaint letter. JR continually told the tenants that there was nothing she could do.

In approximately March 2010, JR asked the tenants to call her whenever disturbances were occurring, rather than wait until the next day. The tenants began to do so, but JR did not effectively deal with the noise, only jokingly asked the tenants to keep it down.

On March 5, 2011 after 9:00 pm, there was a party going on "full force," and the tenants contacted JR. JR told the downstairs tenants and their guests to quiet down because she was "sick of hearing [the tenants] bitching." The party went on, and when the male tenant attempted to deal with it directly, the tenant from 120 and approximately six to eight of his drunk friends surrounded the male tenant and began aggressively calling the tenant names and being aggressive and belligerent. The tenant acknowledged that he grabbed the baseball cap off the head of one of the males present. The tenants' daughter woke up frightened because of the noise. The noise stopped approximately 11:00 pm, but resumed again at approximately 6:00 am the next morning.

The tenants felt like prisoners in their own home, and were at their wits' end. After this latest incident they felt that it was an unsafe environment for them to live. They felt that JR was taking the side of the downstairs tenants and not doing her job. On March 7, 2011 the tenants gave the landlord verbal notice that they would be moving out as of March 31, 2011. The tenants immediately began moving out of the unit, and began residing in their new unit on March 15, 2011.

The tenants planned to finish cleaning the rental unit and removing all of their belongings by March 31, 2011. On March 24, 2011, the owner without notice entered the rental unit, cleaned the carpets, and changed the locks. The landlord then deducted \$112 from the security deposit for the cost of carpet cleaning. The tenants would have cleaned the carpets themselves by March 31, 2011.

The tenants have claimed \$3600 representing half of their monthly rent for the duration of the tenancy, as well as expenses for moving and cancellation of BC Hydro, and for damage to their property when the landlord locked them out. Additionally, the tenants have requested the return of the balance of their security deposit, in the amount of \$112.

The response of the landlord was as follows.

The building manager, JR, testified that the tenants called her a few times with complaints about the tenants below them, and she would then go and ask them to keep it down. About half of the time, the tenants downstairs were not making any noise but

were sleeping. JR kept asking the tenants to write a note, but they would not do so. She also asked the tenants to let her come in and hear the noise from their apartment, because she wasn't hearing the noise. The tenants were confrontational with JR about not doing her job. They were also confrontational with the downstairs tenants. JR felt that things were getting out of control, and she was prepared to evict the tenants from all three units. JR stated that she can't tell people to turn down their music and stop smoking at 1:00 in the afternoon.

The owner, BP, testified that he received a call from the tenants saying that they were being disturbed by other tenants, and he was moving out. On March 24, all evidence was that the tenants had moved out, and he had to get in and clean. BP stated that he did not change the locks, and that he did not break the tenants' flower pots as the tenants claimed.

The tenant from one of the downstairs units, AH, also testified as a witness for the landlord. AH stated that he would have about 10 friends over on the weekends, from about 9:00 pm to 11:00 pm. The tenants upstairs would start yelling and making complaints about him. He offered to give his phone number to the tenants so they could call him if he was disturbing them, but they refused. On March 5, 2011, the male tenant took a swipe at AH's friend's head. The upstairs tenants would on occasion dump water down to his patio from up above.

The landlord denied the tenants' claim in its entirety.

Analysis

In considering all of the evidence, I find as follows.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment of their rental unit. The landlord has an obligation to ensure that the tenant receives quiet enjoyment, and is free from unreasonable interference by other tenants. While a building's rules about "quiet hours" may act as a guideline, a tenant is entitled to reasonable enjoyment of their rental unit at all hours of the day, every day of the week.

In this case, I find that the building manager was clearly aware of the disturbances to the tenants' quiet enjoyment, particularly after March 2010 when she told the tenants to call her whenever a disturbance occurred, and that she did not take adequate steps to correct the situation. I find that the tenants are entitled to compensation for loss of quiet enjoyment from March 2010 to March 2011. I do not find that the tenants are entitled to half of their rent for these months. I find it reasonable to compensate the tenants \$100 per month for 12 months, for a total of \$1200 for loss of quiet enjoyment.

In regard to the tenants' claim for compensation for being forced to move, I find that the tenants made the choice to move rather than apply for an order that the landlord comply with the Act, and I therefore dismiss that portion of their application. I also find that the

tenants did not provide sufficient evidence that the landlord damaged their property on March 24, 2011, and I dismiss that portion of their application.

In regard to the tenants' claim for recovery of a portion of their filing fee, I find that the landlord withheld a portion of the tenants' security deposit without agreement from the tenants and without applying to keep the security deposit. Therefore, the landlord did not comply with section 38 of the Act. The tenants are entitled to double recovery of their security deposit, in the amount of \$1100, less the amount that was returned to them, \$438, for a balance of \$662.

As the tenants' claim was partially successful, they are also entitled to partial recovery of their filing fee in the amount of \$25.

Conclusion

I grant the tenants an order under section 67 for the balance due of \$1887. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: July 18, 2011.

Residential Tenancy Branch