



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenants for money owed or compensation for damage or loss, return of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

Matters related to this tenancy were heard April 8, 2011 under file 766230. This was an application by the landlord for a monetary order for unpaid rent, damage to the rental unit and to keep all or part of the pet damage deposit and security deposit in satisfaction of the claim. The landlord was awarded \$1137.50 and directed to retain this amount from the pet damage deposit and security deposit in full satisfaction of the claim. The tenants were awarded a monetary order for the \$162.50 balance of the security deposit.

As matters related to the security deposit have already been heard and a decision made regarding the pet damage deposit and security deposit this issue may not be heard again as it is *res judicata*. Therefore the tenant's application for return of double the security deposit is hereby dismissed.

This fixed term tenancy began on May 15, 2010 and ended on April 30, 2011. Rent in the amount of \$1800 was payable in advance on the first day of each month and the tenants paid a security deposit of \$900 and a pet damage deposit of \$400.

The tenants stated that all during their tenancy they had to endure noise and cigarette smoke from the neighbouring restaurant and that when they went to look at the rental unit the landlord never told them about these on-going problems. The tenants stated that after months of being constantly awakened late at night by noise from the neighbouring restaurant and having cigarette smoke drift into their apartment, they gave the landlord notice that they would be breaking their lease and finding alternate housing.

The tenants stated that trying to live with the constant noise at night was extremely stressful, so much so that it resulted in one of the tenants requiring medical attention for stress.

The landlord testified that they had no knowledge of noise from the restaurant being an issue as prior to the 2010 complaints from the tenants the landlord had not received any complaints about the noise. The landlord refers to a complaint filed with the City of Vancouver in 2006 however the landlord stated that they did not own the property at this time. The landlord also notes that between July 2006 and June 2010 there were no complaints registered with the landlord or City of Vancouver regarding noise from the restaurant.

The landlord stated that the prior tenant that occupied unit 104 had lived there for 2 years and that they had never received a complaint from this tenant in regards to the noise from the restaurant.

The tenants refer to two letters that were submitted into evidence and these letters are from prior tenants that state there have always been noise issues with the restaurant and that is why this building has a high turnover rate. The landlord testified that one of the tenants moved because of issues with the common smoking area and the other for financial reasons and that neither had ever complained about noise from the restaurant.

The landlord notes that they did offer to relocate the tenant however the tenant stated that neither unit was acceptable as one was a top floor walk-up and the other a 1 bedroom unit.

Analysis

Based on the documentary evidence and testimony I find that the tenants have not met the burden of proving that they are entitled to compensation for loss of their peace and quiet enjoyment.

While it is acknowledged that the tenants were unreasonably disturbed by the patrons of the neighbouring restaurant, the landlord had no control over this **external** noise or cigarette smoke. And although this matter was entirely outside of the landlord's control, the landlord actively took measures to try and mitigate the concerns of the tenants by filing complaints with the restaurant manager, City of Vancouver Community Services, the Vancouver Police Department and Vancouver By-Law Enforcement.

The tenants have not proven beyond a reasonable doubt that the landlord knew about the noise problem prior to the start of this tenancy therefore it is not reasonable to hold the landlord accountable for something they had no knowledge of. Had the landlord been aware of the issue with the noise and not advised the tenants prior to the start of

the tenancy proof of that knowledge would have provided for the tenants to end the tenancy.

Residential Tenancy Policy Guideline 6 **Right to Quiet Enjoyment** speaks to:

A landlord would not be held responsible for interference by an outside agency that is beyond his or her control, except that a tenant might be entitled to treat a tenancy as ended where a landlord was aware of circumstances that would make the premises uninhabitable for that tenant and withheld that information in establishing the tenancy.

The tenant's application for compensation due to loss of their peace and quiet enjoyment is hereby dismissed without liberty leave to reapply.

The tenants claim for return of the security deposit is dismissed without liberty to reapply as matters related to the security deposit were dealt with under file 766230 and that matter cannot be heard again as it is *res judicata*.

Res judicata or ***res iudicata*** (RJ), also known as ***claim preclusion***, is the Latin term for "a matter [already] judged". In the case of *res judicata*, the matter cannot be raised again, either in the same court or in a different court. A court will use *res judicata* to deny reconsideration of a matter.

As the tenants have not been successful in their application they are not entitled to recovery of the \$50.00 filing fee.

Conclusion

The tenant's application is dismissed in its entirety 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: July 15, 2011.

Residential Tenancy Branch