



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlords on May 29, 2011.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this month to month tenancy started on December 01, 2010. Rent for this unit was \$650.00 per month due on the 1st day of each month. The tenant moved from the rental unit on May 29, 2011.

The tenant testifies that the landlords were doing some renovation on their unit upstairs. He states his power went off for approximately one and half hours on March 15, 2011 without any notice from the landlords when they knew he was in his unit at that time. The tenant testifies that on March 20, 2011 the landlords sent him an e-mail giving him two months notice to end his tenancy. He states after this he experienced excessive noise from the landlords unit above.

The tenant testifies he had to live with the excessive noise from the landlords renovations which started sometime in March, 2011. The tenant states he started to keep a record of the times, date and duration of the noise from April 07, 2011. The tenant states again the landlords did not inform him that they would be working on their unit and that there may be some noise associated with this work.

The tenant states on April 09, 2011 he sent the landlords an e-mail expressing his concerns about the noise and lack of notice concerning the renovations they were doing; however he states the landlords failed to respond to this. He states he had to endure hammering with power tools and banging as they ripped out a floor and subfloor in their unit. The tenant testifies he was also continually disturbed by the landlords child who would run up and down in the landlords unit. The tenant states at one time this noise became so bad it rattled his light fixture.

The tenant has provided a log of the noise issues from April 07, 2011 to May 10, 2011. This log indicates that the noise occurred between 5.00 p.m. to 7.30 p.m. on April 07; 5.00 p.m. till unknown time on April 08; 09.00 a.m. to 6.10 on Saturday April 09; 09.10 a.m. to 10.00 a.m. on Sunday April 10; 7.00 p.m. to 9.15 p.m. on April 11; 6.11 p.m. to 8.00 p.m. on April 14; 08.15 a.m. to unknown time then restarted at 3.50 p.m. to unknown time on Saturday April 16; 6.20 p.m. to 6.50 p.m. on April 19 and 8.10 p.m. to 8.45 p.m. on May 10, 2011.

The tenant testifies he was never offered a rent rebate for this disturbance and believes \$500.00 is a fair figure for the landlord to compensate him for his loss of quiet enjoyment.

The landlords testify that they were not aware when they started this work that they would have to remove the subfloor. This started as a job just to remove the linoleum flooring and they did not expect it to be a noisy or lengthy job. However, once the linoleum was removed they found the subfloor had some water damage and also had to be removed. The landlord testifies he did this work himself and had to fit it in on evenings and weekends.

The landlord states he thought he was allowed to make repairs to his own home and the tenant did not come and speak to him to inform he was being disturbed. The female landlord testifies the tenant sent his e-mail to her work e-mail address and her husband would have had no way to access her e-mail account and she did not find this e-mail for some time. The landlords state the tenant had ample opportunity to speak to them as they only lived upstairs and they often saw him outside the house but he would ignore them. They state if he was so disturbed by these noises why did he not speak to them to let them know his concerns. The landlords also state the tenant was told before he moved into the basement unit that they lived upstairs and had a small child. It was his option to rent the unit rather than find one with no children living upstairs.

The landlords state the times shown on the tenants log show they acted reasonably and did not work every day or late at night in order to minimize any disturbance to him. The landlords testify that the tenant is exaggerating the noise levels as they did not use a nail gun and they cut any wood required outside the unit.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I refer the parties to the Residential Tenancy Policy Guidelines #6 which discusses a tenant's right to quiet enjoyment. One of these points states a tenant is entitled to freedom from unreasonable disturbance. In order to find in favor of the tenants claim I would have to first establish that the tenant has shown that there has been substantial interference with the ordinary and lawful enjoyment of the premises by the landlords actions that rendered the premises unfit for occupancy for the tenants use. Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

Further to this I have to balance the tenants' right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

I have considered the arguments raised by both parties and find the landlords have a right to maintain their property. I also find the tenant only sent one e-mail to the landlords concerning the noise he was experiencing with the renovation work and one e-mail on May 15, 2011 about stomping noise. The tenant failed to follow this up with any other form of communication with the landlords when they failed to respond. I have also taken into consideration the duration of the repair work and find the landlords have acted reasonably in the times they carried out these repairs to their home therefore limiting the disturbance and inconvenience to the tenant.

While I do accept the landlords should have notified the tenant that this work was taken place and given him a possible time line for the repairs to be completed out of courtesy to the tenant; I do not find their failure to do this or the disturbances the tenant experienced would warrant a breach of the covenant of quite enjoyment on the part of the landlords. Consequently the tenants' application is dismissed.

Conclusion

The tenants application is hereby 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: September 09, 2011.

Residential Tenancy Branch