



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution under the Residential Tenancy Act (the "Act") for a monetary order for money owed or compensation for damage or loss and to recover the filing fee.

The parties appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

Issue(s) to be Decided

Have the tenants established an entitlement to a monetary order for loss of their quiet enjoyment and to recover the filing fee?

Background and Evidence

This one year, fixed term tenancy began on May 15, 2011, actually ended on September 30, 2011, when the tenants vacated the rental unit, and monthly rent was \$900.00.

The rental unit is on the lower level, beneath the landlords' home on the upper level.

The tenants' monetary claim is in the amount of \$1,500.00, which consists of an alleged lack of quiet enjoyment and loss of privacy during the tenancy and for moving expenses.

The tenant's relevant evidence included a copy of the previous dispute resolution Decision, estimates from moving companies, a daily journal of events, the tenancy agreement, notice to the landlords regarding noise levels and entry into the suite, notices to the landlord about the air conditioning in the suite, and a 1 Month Notice to end the tenancy.

The parties were previously in dispute resolution on the tenants' application to cancel a 1 Month Notice to End Tenancy and for money owed or compensation for damage or loss under the Act.

The Decision dated July 27, 2011, cancelled the Notice; however the Dispute Resolution Officer additionally dismissed the tenants' monetary claim for money owed or compensation for damage or loss, with leave to reapply. The monetary claim was dismissed due to the matter being unrelated to the portion of the application dealing with cancellation of the 1 Month Notice.

It is important to note, however, that the Dispute Resolution Officer in the Decision of July 27, 2011, mentioned and addressed the issues mentioned in the present application, having made certain findings on these issues.

The tenants' relevant testimony:

Shortly after they moved into the rental unit, the tenants learned that the landlords operated a daycare in their home, in addition to them having 3 children and 2 dogs of their own.

The tenants would never have moved into the rental unit if they have been aware that a daycare was being operated in the unit above theirs and that the constant noise and disruptions from the daycare and the landlords' children began within a week after moving in.

The ongoing noise, particularly from 7-9 a.m. every day woke the tenants and disrupted their sleep, as the male tenant worked late night hours. The noise from upstairs included constant running back and forth along the length of the floor, toys dropping, yelling and loud television sounds.

The landlords misrepresented that the house between the floors were well insulated. This became evident when the air conditioner was being repaired, as the tenants noted that no insulation existed between the floors.

The tenants spoke to the landlords about the issue of the excessive noise, and instead of addressing their complaints, the landlords issued the tenants a letter offering to release them from their one year lease. The tenants did not want to move so soon and intended to fulfill their one year lease after the ordeal of having made a long distance, 13 hour move to their new home.

In July, after a period of “marching/stomping,” the landlords left their unit, which turned out to be their vacation. The tenants were not given an emergency contact number, and their internet stopped working.

During the landlords’ vacation, workman arrived to begin work upstairs, with no notice to the tenants. The work extended into the tenants’ area, again with no notice.

One incident involved the male landlord, knocking on their door at 11:00 p.m., which the tenants did not answer due to the late hour.

After the previous dispute resolution hearing, the noise intensified, not abated. The noise included children constantly stomping/marching and music playing so loud the walls shook.

The tenants were never provided quiet enjoyment during the length of the tenancy due to the constant noise from above.

Upon query, the tenants stated that they did move without the services of a moving company and therefore did not incur those costs.

The landlords’ relevant testimony:

The tenants were told that the landlords had three young children, 2 dogs and that the female landlord would be looking after 2 extra children. The landlords were not informed that the male tenant worked the night shift.

Upon receiving the tenants’ complaints about the noise, the landlords altered their activities by moving the children’s toys, with the exception of 1 bin, to the recreation room in the basement. The children’s activities were limited to sitting on the couch and watching television in the morning.

Other remedies undertaken by the landlords included not allowing the children to play on the main floor, not having company over not using the game systems and turning off the bass on their television.

The landlords stated that they did not inform the tenants the house was insulated; only that it was built to comply with building codes.

The landlords were put under great stress by the tenants’ complaints.

Due to the living situation not being good for either party, they reached a mutual agreement to end the tenancy.

The landlords' evidence included a written summary, email transmissions between the parties and notices of the tenants' forwarding address.

Previous Dispute Resolution:

In her Decision in the previous dispute resolution, the Dispute Resolution Officer made several key findings, which will be referenced herein.

Among other things, the Dispute Resolution Officer found that the Landlords had "little insight into the effect the loud and constant noise disturbances were having on the Tenants despite the Tenants' frequent protests. In particular, the Landlords' response to those complaints was that the Tenants could leave if they were unhappy about it."

Additionally the Dispute Resolution Officer found that the "Landlords did not have the Tenants' permission to enter the rental unit on July 28, 2011 without one of them being present. While this may have been a misunderstanding on the Landlords' part, I find that it contributed to the deterioration of the relationship between these parties. I further find that the Landlords request to change the terms of the tenancy by moving the Tenants' smoking area at this time created even more difficulties because that specific issue had already been addressed and negotiated at the beginning of the tenancy."

Analysis

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

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to freedom from unreasonable disturbance and interference.

On a balance of probabilities, I find the tenants have established that the landlords have interfered with the tenants' right to quiet enjoyment by frequent, ongoing noise from the daycare in the landlords' home. In weighing the evidence, I prefer the tenants' testimony over the landlords' testimony as I find it doubtful the landlords informed the tenants that a daycare would be operated in the suite above their basement suite. In reaching this conclusion, I considered that the male tenant worked the night shift and would know that a daycare being operated directly above would prevent him from sleeping later in the morning.

I also consider that many of the issues in this application were decided in previous dispute resolution.

The previous Decision found the landlords were creating "loud and constant noise," were improperly dealing with the tenants' reasonable complaints, improperly entered the tenants' rental unit, improperly sought to change terms of the tenancy agreement and provoked the tenants.

Due to the legal principle of res judicata, I am bound by this earlier Decision and I cannot re-decide these issues.

Due to the above, I find landlords were in direct violation of the tenants' right to exclusive possession and right to be free from unreasonable disturbance.

I find the landlord's frequent and ongoing contravention of the Residential Tenancy Act in dealing with the tenants caused the tenants to have suffered a loss of quiet enjoyment, and therefore a subsequent loss in the value of the entire tenancy, from May 15 through September 30, 2011. As a result, I find the tenants are entitled to compensation for that loss.

Residential Tenancy Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed."

I find the situation was untenable to the tenants due to the constant and loud noise of the landlords, which compelled them to move from the rental unit much earlier than anticipated and that a reasonable amount for devaluation of that tenancy to be **\$250.00 per month.**

I therefore find the tenants have established a monetary claim in the amount of \$1,175.00, comprised of devaluation of the tenancy of \$1,125.00 (\$125.00 for May 15-May31, 2011, and \$250.00 each for June-September, 2011) and recovery of the filing fee of \$50.00.

Conclusion

Pursuant to Section 67 of the Act, I have provided the tenants with a monetary order for \$1,175.00.

I am enclosing a monetary order for \$1,175.00 with the tenants' Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the landlords fail to comply with this monetary order.

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: November 21, 2011.

Residential Tenancy Branch