



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNR, OPB

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order for \$2350.00 and a request for recovery of the \$50.00 filing fee.

Background and Evidence

The applicants testified that:

- The tenants ended a fixed term tenancy before the expiration date, giving notice by e-mail on January 1, 2012 and vacating on January 31, 2012.
- They attempted to re-rent the unit and mitigate their losses however they were unable to re-rent the unit until March 1, 2012 and therefore lost the full rental revenue for February 2012.

The applicants are therefore requesting a monetary order as follows:

Lost rental revenue for February 2012	\$2350.00
Total	\$2400.00

The respondent's testified that:

- They vacated the rental unit early because the landlords breached their right to quiet enjoyment.
- When they rented the unit they were not informed that there was a possibility that construction would take place in the commercial portion of the building.
- The landlords were aware that there was a possibility that construction could take place but failed to inform them.
- Had they inform them of the possibility of construction it is unlikely they would have rented the unit as they had two young children and wanted a quiet place.
- Construction started in May of 2011 in the hallway in the front of the condo and then large-scale construction started August 2011 with a new elevator shaft and renovations to the incoming commercial tenant.
- The noise from the commercial construction was extensive and ongoing from 7 a.m. in the morning with few breaks through till 5 p.m. in the evening.
- The noise was so extensive that the children could not stay in the building or sleep in the building and as a result had to be taken out for long walks in the stroller for them to get any naps.
- The construction went on for months and was affecting their marriage and the landlord had informed them that they could leave the tenancy agreement early as long as they gave 30 days notice to end the tenancy.
- Therefore on January 1, 2012 they gave notice to end the tenancy on January 31, 2012 and vacated the rental unit.
- They believe the landlord breach their right to quiet enjoyment by not informing them of the upcoming construction and therefore they had the right to leave the tenancy early due to that breach.

Analysis

I do not doubt that the tenants suffered a substantial loss of use and enjoyment of the rental unit; however I am not convinced that the reason they gave for ending the tenancy was due to a breach of the right to quiet enjoyment.

The tenants Notice to End Tenancy that was sent by e-mail on January 1, 2012 makes no mention of any breach of their right to quiet enjoyment and in fact it states, and I quote "You've been a great landlord and I know that all the noise and construction in the building was not, in any way, your fault".

If the tenants were really ending the tenancy due to a breach of their right to quiet enjoyment I find it most likely that they would have mentioned that breach in their Notice to End Tenancy.

As I am not convinced that the tenancy was ended due to a breach of the tenants right to quiet enjoyment, the tenants are still liable for any lost rental revenue resulting to the landlords as a result of the tenants ending their tenancy prior to the expiration date.

In this case the landlords initially lost the rental revenue of \$2350.00 for the month of February 2012; however for the month of March 2012 they re-rented the unit for \$2450.00, \$100.00 per month more than they would have collected from the respondent's.

Therefore the net actual loss to the landlords resulting from the early end to the tenancy is only \$2250.00, and therefore it is my decision that that is the amount for which the tenants are liable.

I also allow recovery of the \$50.00 filing fee.

Conclusion

I have issued an order for the tenants to pay \$2300.00 to the landlords.

The remainder of the claim 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: March 05, 2012.

Residential Tenancy Branch