



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing was convened by way of conference call in repose to the tenants application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues; and to recover the filing fee from the landlords for the cost of this application.

The tenants and landlords attended the conference call hearing along with a lawyer for the landlords. The parties gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch. The tenants testify that they have received the landlord evidence package but it was not received five days before the hearing. The tenants were given opportunity to seek an adjournment for the hearing today but confirmed they were satisfied for the hearing to continue and for the landlords evidence to be included in the hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Are the tenants 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 is \$1,100.00 per month and is due on the first day of each month in advance.

The tenants testify that they originally rented the upper portion of this property and their daughter lived in the separate basement suite. The tenants state their daughter moved from the suite and the landlords rented the suite to another tenant around the second week of January 2012. The tenants state that since this time they have experienced noise from the tenants basement suite at all hours of the day and night with doors opening and closing, voices, loud music the sounds of the basement tenant having sex and all other household noise. The tenants state this tenant has many cars parked at the property although she does not own a car herself and the noise from the cars also disturbs the tenants.

The tenants' testify that the basement tenant and her guests smoke, and this cigarette smoke filters into the upper suite which causes difficulties for the tenants with the smell of smoke and because the smoke adversely affects one of the tenants who suffers with asthma. On one occasion the tenants' state they returned home at 5.30 p.m. and found their unit filled with smoke. They testify that this smoke smelt like cigarette smoke. The tenants testify that they had to call the fire service because the landlords would not respond to their complaint. When the firemen came to the house they went to the basement unit and told the tenants that the downstairs tenant had four people in her unit and they were cooking hamburgers. The tenants state the hamburger smell masked the smell of the cigarette smoke. The tenants state the downstairs tenant showed the fireman an ashtray outside her unit and told him she only smoked outside. The tenants testify that the downstairs tenant's guests wait until the downstairs tenant leaves for work and then they start to smoke in the basement unit and the smoke comes through the vents to the tenants' upper unit.

The tenants testify that they have blocked off their vents and no longer bother complaining to the landlords as the landlords seem more concerned about the downstairs tenants than the upper tenants. The tenants testify that they do smoke a single marijuana joint in their unit to mask the smell of cigarette smoke from the downstairs unit.

The tenants testify that they have called the landlords on numerous occasions to come and smell this smoke for themselves but the landlords have refused to come to the rental property and have therefore not protected the tenants' right to quiet enjoyment of their unit.

The tenants' testify that the police have been called because that tenant informed the police that the upstairs tenants were pouring water down her vent. The tenant states this water actually came from a leak in the toilet in their bathroom and after a plumber was eventually called this resolved that problem.

The tenants testify that the downstairs tenant called the police because she complained that they were playing their music too loud. The tenants testify that they had turned their music up loud to try to drown out the noise from the downstairs tenant's music. The tenants testify that although they pay the utility bills for the entire house the downstairs tenant has cut off the power on occasion to their unit.

The landlords testify that after they received complaints from the upper tenants they went to the lower tenant and asked this tenant to smoke outside her unit. The landlords testify that the lower tenant assured them that she did smoke outside and showed them the container with ash and cigarette butts.

The landlord testifies that she gets complaints from the lower tenant about the upper tenants smoking marijuana and noise from their dog and their music, there was also a complaint made when the upper tenants' daughter pushed the lower tenant. The landlords testify that the lower tenant works night shifts so does come and go at different times. The lower tenant does not own a car so is picked up and dropped off for work. The landlords testify that the lower tenant now also has a roommate living with her.

The landlords testify they originally wanted to rent the house as a single family dwelling but as the tenants wanted their daughter to rent a separate unit she allowed them to rent the upper portion and allowed their daughter to rent the basement. When the upper tenants daughter moved out they were offered the tenants the opportunity to rent the entire house

or to enter into a rent to purchase agreement with the landlords. The landlords state the upper tenants did not want to do this so the landlords rented the basement unit to this lower tenant. The landlords' testify that the upper tenants were always aware that this was a single family home and there would be some noise transference between the units due to normal living conditions. When the upper tenants' daughter lived in the basement she also smoked but the tenants did not raise any concerns about this.

The landlords testify that neither unit is designated as a non smoking unit although the lower tenant has now been instructed not to smoke in the unit and has been complying with this instruction. It is the upper tenants who smoke marijuana in their unit. The landlord testifies that they have now refused to take the upper tenants telephone calls as the female tenant has shouted and sworn at the landlord and made threats against them.

The landlords' lawyer states if one of the upper tenants has asthma and is so sensitive to smoke why do the tenants smoke marijuana in their home. The landlords lawyer states the upper tenants have exasperated the problems between the tenants, by smoking marijuana, turning up their music and by shouting and swearing at the landlord. The landlords' lawyer states the upper tenants also have a responsibility to mitigate the situation but have failed to do so. When tenants share a house there will be everyday living noise from both sets of tenants and there will be cooking smells.

Analysis

With regard to the tenants application for a Monetary Order for money owed or compensation for damage or loss; the tenants seek compensation of \$5,000.00 as they argue the landlord has done nothing to protect their right to quiet enjoyment of their rental unit. The landlord argues that this is a disagreement between the tenants and they investigated the upper tenants allegations that the lower tenant smoked in her unit and found these allegations to be unfounded.

When a party makes a claim of this nature and the claim is contradicted by the other party the claimant must meet the burden of proof and provide corroborating evidence to support

their claim. The claimants must provide evidence to show that the lower tenant has disturbed their quiet enjoyment by smoking and making excessive noise and must show that the landlords have failed to do anything about these complaints in violation of the *Act* or tenancy agreement. The claimants must then show what steps they took to mitigate or minimize this loss.

I have reviewed the testimony and documentary evidence before me and find that the tenants have not shown that the downstairs tenant has disturbed their quiet enjoyment beyond what would be considered normal living noise. If the downstairs tenant works a different shift pattern to the upstairs tenants then this is a more difficult situation for both sets of tenants; however, both sets of tenants are entitled to live a normal life in accordance to their shift work. The tenants have also agreed that they have created more noise by turning up their music to drown out the downstairs tenants' music. In this situation I find the tenants have not mitigated their noise by attempting a peaceful resolution but have retaliated and exasperated the already volatile situation.

With regard to the issue with cigarette smoke; again the tenants have the burden of proof and as neither unit is a smoke free area I am not prepared to consider the tenants arguments that the downstairs tenants smoke causes an adverse effect on one of the tenants health as the tenants admit they do smoke marijuana in their own unit. The tenants have provided no other corroborating evidence to show that the downstairs tenant or her guests smoke to the extent that the smoke fills the upper unit. I find the landlords have done what is reasonable in these circumstances by speaking to the downstairs tenant and requesting that she does not smoke in her unit and confirmed this by seeing the container outside in which the downstairs tenant deposits her ash and cigarette butts.

There has obviously been a break down in the tenants' relationship which has exasperated this situation and this has also extended to the breakdown in the landlord/tenant relationship. As both sets of tenants are equally at fault in antagonizing the other set of tenants I am not prepared to find in favor of the tenants claim against the landlords with regard to their monetary claim for compensation. Consequently the tenants' application is dismissed.

As the tenants have been unsuccessful with their claim I find they must bear the cost of filing their own application.

Conclusion

The tenants' 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: March 16, 2012.

Residential Tenancy Branch