



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RP, FF, O

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy; an order to have the landlord make repairs; and a monetary order.

The hearing was conducted via teleconference and was attended by both tenants; the landlord and his witness.

During the hearing, the landlord verbally requested an order of possession should the tenant be unsuccessful in their Application.

At the end of the hearing the tenant's indicated that they were going to vacate the rental unit at the end of December 2012; on or before the effective date of the 1 Month Notice to End Tenancy for Cause of December 31, 2012 issued by the landlord. The tenants also agreed to allow the landlord receive an order of possession.

As such, and despite objections from the tenants, I find there is no reason to adjudicate their Application to cancel the notice or to obtain an order to have the landlord make repairs. I therefore amend the tenant's Application to exclude these matters.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for loss of quiet enjoyment and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on July 1, 2012 as a 1 year fixed term tenancy for the monthly rent of \$1,500.00 due on the 1st of each month with a security deposit of \$750.00 paid.

The parties agree that in August 2012 an alarm like sound began emanating from neighbouring unit and that despite repeated requests to the onsite strata and building manager and to the landlord no one sought to find out what the noise was or to stop.

The tenants submit that the noise was continuous and sounded like a smoke detector or fire alarm. The tenants further submit that as a result they were unable to sleep for two nights and it was only rectified when they called the police who had the fire department attend and breakdown the door to the unit where the occupant was away and find the cause of the sound.

The landlord submits that his hands were tied because the strata would not enter into the neighbours unit when she was away and as such he could not do anything about stopping the noise.

The tenants seek compensation in the amount of \$100.00.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

Despite the landlord's attempts to have the strata investigate and stop the alarm noise I find the landlord had an obligation under Section 28 to stop the disturbance as early as possible. I find that when refused by the strata he should have taken additional steps to at least attempt to have it stopped or at the very least offered the tenants an alternate accommodation until the disturbances could be rectified.

I find the tenant's have established they suffered a loss of quiet enjoyment provided for under Section 28. I also find the value of that loss as estimated by the tenants at \$100.00 to be reasonable compensation.

I also note that I find the inaction of both the landlord and the strata to address a malfunctioning alarm to be very disturbing and that the parties are very fortunate that a fire or other such event did not occur and cause damage or death in the complex.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$100.00** for the reasons noted above.

This order must be served on the landlord. If the landlord fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As to the tenant's claim was largely unnecessary, I dismiss their claim to recover the filing fee for this Application.

In support of the agreement of the parties that the tenants will vacate the rental unit I grant the landlord an order of possession effective **December 31, 2012 after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: December 14, 2012.

Residential Tenancy Branch