



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the landlord to comply with the Act, a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlord to comply with the Act, to a monetary order and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on March 15, 2012, monthly rent is \$1595.00 and that the tenants paid a security deposit of \$797.50 on or about February 24, 2012.

The rental unit is on the main floor, there is a basement suite rented to other tenants below the rental unit, and there are two other suites, one on top of the other above the tenants' rental unit.

The tenants' monetary claim is in the amount of \$2400.00, which they explained is compensation for loss of their quiet enjoyment. Additionally the tenants are seeking an order requiring the landlord to comply with the Act, regarding their quiet enjoyment.

Tenants' evidence-

The tenants submitted that beginning in July 2012, they notified the landlord of loud noises coming from the basement suite, with no results. The tenants said that beginning October 20, 2012, they again alerted the landlord through multiple text messages that the tenants in the basement suite were disturbing their quiet enjoyment by loud partying, excessive music, shouting and smoking in their suite late at night and into the next morning.

The tenants submitted that the basement suite tenants are frequent loud partiers, and often times are drunk. The tenants claimed that although they have communicated with the landlord about the excessive noise on numerous occasions, the landlord has failed to correct the problem.

Some of the noise described by the tenants was of the other tenants shouting at the top of their lungs, oftentimes with vulgarities.

The tenants provided evidence that on a number of occasions they have had to call the police to deal with the noise and parties occurring at the other rental unit. The tenants also documented how the smoke from the basement unit and outside patio drifts up into their rental unit.

The tenant submits that the landlord has failed to take corrective action and their quiet enjoyment is being impacted. The tenants also submitted that the landlord's method of handling the situation was to request the tenants arrange a meeting with the basement unit tenants to communicate their issues. According to the tenants this would not be possible due to the basement unit tenants failing to confirm a meeting time and due to the aggressive behaviour of those tenants towards the tenants. According to the tenants, this behaviour included using profane language directed to the tenants.

The tenants further said that the landlord has only responded 30%-50% of the times they issued complaints and that there has been no improvement since making the complaints.

The tenants seek an order that the landlord comply with the Act, regulations and tenancy agreement to take corrective action to protect their right to quiet enjoyment.

As to the tenants' request for monetary compensation, they explained that this amount was derived by calculating that their tenancy had been devalued by 50%. In further explanation the tenant said that both of them work and go to school, and due to the frequent noise disruptions, one tenant spends at least 3 nights each week away from the rental unit. The tenants claimed devaluation of the tenancy for 4 months, as that is the documented time period of making complaints to the landlord, with no results.

The tenants' relevant evidence included text messages to the landlord, the tenancy agreement and a statement from one of the tenant's boyfriend, supporting the allegation of excessive noise all night long.

Landlord's evidence-

In response, the landlord contended that for every complaint, they have acted proactively and as recently as 1 ½ weeks ago, the landlord placed a phone call to the basement unit tenants informing them their tenancy would end if the police were called one more time for noise complaints.

The landlord also argued that many of the problems could be resolved if all 4 tenants met with each other to talk about their complaints. The landlord has said that he would facilitate a meeting with the tenants.

The landlord's agent, who attended the hearing, said that he met with the tenants in the basement suite, and inquired as to why the tenants have failed to meet with them.

The landlord also pointed out that the residential property was an older character home with hardwood floors and was situated near a busy area of town.

The landlord pointed out that they had 3 ½ pages of documented response to the tenants' complaints.

The landlord's relevant evidence included copies of text message communication between the parties.

Analysis

Base upon the oral and written relevant evidence and a balance of probabilities, I find as follows:

A breach of quiet enjoyment includes when a tenant's right to enjoy their premise in peace and without unreasonable disturbance. Temporary discomfort or inconvenience does not constitute a breach of a tenant's quiet enjoyment; however, substantial interference or ongoing disturbances can constitute a breach of a tenant's right to quiet enjoyment. Ongoing and unreasonable noise could result in the loss of a tenant's right to quiet enjoyment.

A landlord is required to balance and protect the rights of each tenant. While a landlord would normally not be held responsible for the actions of other tenants, a landlord must take reasonable steps to address and correct a situation where the landlord is aware that one tenant is unreasonably disturbing another tenant.

Section 47 of the *Act* provides that a landlord may end a tenancy by issuing a one month Notice to End Tenancy for Cause. One of several grounds that can be identified as a basis to end a tenancy is the ground that the tenant has significantly interfered with or unreasonably disturbed another occupant.

From the evidence provided by the tenants I am satisfied that there have been multiple noise complaints to the landlord. The tenants sent multiple text messages to the landlord, one on July 2012, but more importantly, beginning on October 20, 2012, with frequent requests to the landlord. On at least two occasions the tenants have also called the police to deal with the noise bylaw infractions.

I also do not find it reasonable that the landlord expects the tenants here and the tenants in the basement suite resolve their own difficulties, given the number of complaints having to be made by the tenants, the police complaints and the basement unit's tenants' aggressive attitude toward the tenants.

I find that the landlord has not taken appropriate and reasonable steps to address the concerns and complaints of the tenants, even after giving consideration to the age, structure and character of the rental building. I do not find it reasonable that the tenants would endure noise levels in violation of the city noise bylaws.

Pursuant to section 62(1)(b) of the Act, I find that it is reasonable to order that the landlord take immediate measures to address and correct the issue of noise disturbances experienced by the tenants. This should include issuing immediate warning letters and if the problem does not resolve quickly, may require that a notice to end tenancy be issued pursuant to section 47 of the *Act*.

With respect to the tenants' request for monetary compensation for a loss of their quiet enjoyment and a subsequent devaluation of their tenancy, as I have found that the landlord's lack of taking effective corrective steps have led to the tenants' loss of quiet enjoyment, I find it reasonable that the tenants are entitled compensation for a devaluation of their tenancy.

Residential Tenancy Policy Guideline 6 states the determination of the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation and the length of time over which the situation has existed.

Additionally the arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises.

I find on a balance of probabilities that the ongoing, frequent noise disruptions from the tenants in the basement suite lasting at times until after the tenants have gone to work or school in the morning and smoking from the basement suite despite their written requests to the landlord that the tenancy has been devalued. I find a reasonable amount of compensation for that devaluation from noise and sleep disturbance to be \$300.00 per month, from October to the present, January 2013.

I therefore find the tenants have established a monetary claim of \$1200.00 (\$300.00 for each October, November, December 2012, and January 2013) for a loss in the value of the tenancy for those months.

The tenants may satisfy their monetary award by deducting the amount of \$1200.00 from their next or a future month's payments of rent in satisfaction of the award. The tenants should inform the landlord of their intention to redeem this amount when making a reduced monthly rent payment.

I also find that the tenants' application had merit and I therefore award them recovery of the filing fee of \$50.00. The tenants are further authorized to deduct the amount of \$50.00 from their next or a future month's rent payment.

Pursuant to Section 67 of the Act, I have provided the tenants with a monetary order for \$1250.00 in the event they do not make the deduction of \$1250.00 from a future rent payment. This order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The tenants are at liberty to make further application for dispute resolution in the event the landlord fails to ensure the tenants their right to quiet enjoyment, seeking further financial compensation and orders for the landlord.

Conclusion

I have granted the tenants' application and have ordered that the landlord comply with the Act by addressing the noise complaints received by the tenants and take appropriate and reasonable steps to address the problem. If the landlord fails to take reasonable measures the tenants may file a new application for dispute resolution.

I have granted the tenants a monetary award of \$1250.00, comprised of \$1200.00 for a devaluation of the tenancy and recovery of the filing fee of \$50.00.

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* and is being mailed to both the applicant and the respondent.

Dated: January 24, 2013



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*
(Please Note: Legislated deadlines apply)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca