



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC

Introduction

This hearing concerns an application by the tenants for a monetary order for compensation for damage or loss under the Act, Regulation or tenancy agreement. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Arising from a previous hearing in a dispute between these same parties (file # 801386), a decision was issued by date of January 16, 2013. In the decision, six particular aspects of an agreement reached between the parties are set out. In this present application the tenants claim that the landlords breached the agreement, and that the tenants are therefore entitled to compensation in the amount of \$1,200.00. During the hearing, tenant "JM" had no explanation of the calculation resulting in the specific amount claimed.

Subsequent to the last hearing, the tenants claim that the upstairs tenants continued to disturb them. In support of their claim they submitted two letters written by "AD," a family friend, which are dated, respectively, January 30, 2013 and March 1, 2013. The letters speak to two separate occasions when the upstairs tenants allegedly breached the terms of the agreement reached on January 16, 2013.

Specifically, in the letter of January 30, 2013, "AD" claims that on the evening of January 18, 2013, the upstairs tenants "were excessively thumping around and their music was way louder than necessary."

Further, in the letter of March 1, 2013, "AD" claims that "a second breach of contract" occurred on February 20, 2013 when the upstairs tenants "turned up the music so the

bass was thumping so bad the light fixtures [in the tenants' unit] were shaking." In response, "AD" called Police. "AD" claims the Police "yielded a warning as the officer deemed the noise not noisy." "AD" further claims that the upstairs tenants later urinated on her car.

During the hearing the landlord testified that in compliance with the agreement reached between the parties on January 16, 2013, he went to speak with the upstairs tenants on January 19, 2013. The landlord takes the position that this meeting was consistent with the following particular aspect of the agreement:

The landlords agree to speak to the upstairs tenants to ensure they do not make any excessive noise late at night beyond normal living noise.

The landlord testified that after the hearing on January 16, 2013, the tenants did not again contact him in any way to complain about the conduct or behaviour of the upstairs tenants.

As to "AD's" call to Police on February 20, 2013, the relevant applicable aspect of the settlement achieved by the parties on January 16, 2013 is as follows:

The tenants agree to refrain from calling the police about the upstairs tenants as long as there is no excessive noise late at night beyond normal living noise.

It appears that the tenants and / or "AD" considered the noise from the upstairs tenants to be sufficiently excessive, that a call to Police was warranted.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

I find that in their application the tenants have not claimed compensation for an alleged breach of the right to quiet enjoyment. Rather, the tenants seek compensation for an alleged breach by the landlord of a term of the agreement reached on January 16, 2013.

Having considered the documentary evidence and testimony, I find that the tenants have failed to prove that the landlords did not undertake to do what was agreed, which was to "speak to the upstairs tenants to ensure they do not make any excessive noise late at night beyond normal living noise." As previously noted, the landlord testified that

following the hearing on January 16, 2013, he met with the upstairs tenants on January 19, 2013. Apparently, after the hearing the tenants did not ever again contact the landlord to complain about any concerns related to the upstairs tenants. In the result, neither did the landlord undertake to speak with the upstairs tenants about allegedly “excessive noise” on any further occasion after his conversation with them on January 19, 2013.

While the tenants may have felt that the upstairs tenants were excessively noisy, I find that they have failed to meet the burden of proving that the landlords breached the terms of the agreement set out in the decision of January 16, 2013. Accordingly, the tenants’ application is hereby dismissed.

Conclusion

The tenants’ application is hereby dismissed.

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: May 07, 2013

Residential Tenancy Branch