Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MT, CNC, MNDC, OLC, LRE, FF

Introduction
Both parties have filed applications for dispute resolution.

The tenants apply for an order for more time to dispute a one month Notice to End Tenancy, and if granted, an order to cancel a one month Notice to End Tenancy. At the hearing, the tenants confirmed they were moving out, were no longer seeking these orders. The landlord seeks an Order of Possession, on the basis of that Notice. The tenants consented at the hearing to the landlord being issued an Order of Possession, as sought in the landlord's application.

The tenants further apply for an order the landlord comply with the Act, Regulation or tenancy agreement, and to suspend or set conditions on the landlord's right to enter the rental unit. These claims were abandoned by the tenants at the hearing.

The tenants further apply for monetary compensation from the landlord in the sum of $5,000.00.

Issue(s) to be decided
Are the tenants entitled to compensation from the landlord?

Background and Evidence
This tenancy began December 1, 2011. Monthly rent was generally $1,250.00, but there were severally months where the landlord unilaterally lowered the rent to accommodate and assist the tenants. The tenants paid a security deposit of $625.00 on November 1, 2011. The initial tenancy agreement was for a fixed term of 6 months. Subsequent fixed term agreements extended the tenancy, with the latest agreement fixing the end date of the tenancy at July 31, 2014. That agreement, as did the prior agreements, provided that the tenancy would not continue on a month to month basis thereafter.

The tenants were initially liable to pay 50% of the utilities, and the upstairs tenants were paying the other 50%. Following the tenants raising complaints about excessive heat in the premises, and concerns about excessive consumption of electricity, and lack of hot water, the landlord agreed to lower their portion of the utilities to 25% for a period, with the landlord paying the balance personally. The utilities later were restored to 50%

payable by the tenants, then were again lowered and have since remained at 40% payable by the tenants.

The tenants contend that the tenants upstairs kept the premises unbearably hot, by virtue of their use of an upstairs thermostat that controlled a furnace that provides heat to the entire unit. The upper tenants consumed all the hot water, leaving the tenants little hot water to bathe in or do dishes with. The upper tenants made excessive noise, often late at night. When the tenants complained to the landlord, he simply advised them they would have to deal with it. He prepared a Mutual Agreement to End the Tenancy, and suggested they could sign it and move out if not happy. The tenants consider this to be a bullying tactic by the landlord. The tenants submit they have suffered a loss of quiet enjoyment of the premises, and calculate that they have been disturbed by the noted problems 3 or 4 times per week throughout their tenancy, except at those occasional times when most of the upper tenants were not home.

The landlord testified that the tenants were made aware at the start of the tenancy that they were sharing the home with another family, that the tenancy would require cooperation on their part, that the house was not sound proof, and that utilities had to be shared equally between the tenants. The tenant agreed to rent under these conditions. In fact the lower tenants proved to be disruptive, and police were required to attend the premises at times. The lower tenants resolved their heat problem by turning off the furnace, and their water problem by turning down, or even off, the hot water heater so that the upper tenants would not have hot water. The landlord attempted to assist by encouraging the upper and lower tenants to work out these difficulties between themselves. The landlord assisted by reducing the amount payable by the tenants for utilities, and also reduced the tenants' rent for a period. The landlord took all due diligence at other times as well, such as when the tenants complained they had found a bed bug, or when the upper tenants complained they had no hot water at all.

Analysis

As confirmed by the tenants at the hearing, the only portion of their claim they are proceeding with is their monetary claim as against the landlord. As the tenants are not disputing the one month Notice ending their tenancy, and as they consent to me issuing the immediate Order of Possession sought by the landlord, such order is made. I note that the effective ending of the tenancy pursuant to the Notice is May 31, 2014, but that the tenants remain in possession. As the tenancy has ended, the landlord is granted an Order of Possession, effective 48 hours following service upon the tenants.

I turn to the tenants' claim that the landlord failed to take sufficient, reasonable or appropriate steps to control the ongoing noise, the excessive consumption of heat, and the excessive consumption of hot water of the upper tenants, and that instead the landlord chose to bully the lower tenants. In this regard I must determine whether the landlord has breached the implied covenant of quiet enjoyment in every tenancy agreement, and the statutory obligation to provide a tenant quiet enjoyment and freedom from unreasonable disturbance (found in the section 28 of the Act). In making such a determination, I must take into consideration the seriousness of the situation,

and the length of time over which the situation has existed, and the actual steps taken by the landlord.

The covenant of quiet enjoyment promises that the tenants shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenants' right to freedom from serious interferences with the tenancy for all usual purposes. Every tenancy agreement contains an implied covenant of quiet enjoyment. In order to prove an action for a breach of the covenant of quiet enjoyment, the tenants must show that there has been substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that renders the premises unfit for occupancy for the purposes for which they were leased. Frequent and ongoing interference (by way of omission) by the landlord may form a basis for a claim of a breach of the covenant of quiet enjoyment, such as the failure by the landlord to take adequate steps to control unreasonable and ongoing noise by other tenants of the landlord.

On the other hand, it is necessary to balance the tenants' right to quiet enjoyment with other factors that may be out of the landlord's control. For example, tenants must expect that others using the same building will make some noise. Noise transfer within the premises is a factor as well, and in this case when the tenants rented the premises, they knew that there was poor sound proofing between the suites, and they accepted the tenancy on that basis.

In a case where a tenant has notified the landlord of ongoing disturbances of noise late at night, or ongoing lack of hot water, or unreasonable or excessive consumption of electricity or gas by other tenants in the premises, the landlord must follow up with appropriate steps. It is the landlord that has a contractual relationship with the other tenants. The lower tenants in this case had no contractual legal right to enforce their right to peace and quiet as against another tenants in the same building.

I have considered the various issues raised by the tenants. With respect to the issue of excessive consumption of gas or electricity, I find the landlord took the reasonable steps of reducing the tenants' portion of the utility bills, with the landlord absorbing a portion. Over time this would be a significant savings of money to the tenant, and in my view sufficiently offsets the tenants' claim for compensation for this issue.

With respect to the issue of noise, the tenants allege this noise has continued throughout the tenancy, other than times when the upper tenants were absent. It is important to note that the tenants were advised of this issue by the landlord before they began their tenancy. They would also have clearly been aware of this issue when they chose to enter into several new tenancy agreements, following the ending of their prior fixed tem tenancies. By their own testimony, the upper tenants took steps to minimize their noise following any complaint, although the noise would eventually return, demonstrating at least some effort by the tenants to reduce noise. It is also relevant that the lower tenants were themselves disruptive at times, to the point where police had to be called to the premises. The lower tenants did not promote effective solutions to the

problem, but rather resorted to aggravating tactics such as pounding on walls. I further accept that some steps were taken by the landlord, including speaking with both parties in an effort to have them take responsibility for their own noise, and to work cooperatively with each other. I have considered all of these factors. I accept the tenants' testimony that they have been disturbed by sound transfer from the upper unit to their unit, and I accept that this resulted in them being awakened at times, and becoming upset at times. However, given all of these factors, I do not find proven that these disturbances have proven to reach the threshold of qualifying as a substantial loss of quiet enjoyment caused by the omission of steps by the landlord. The landlord has taken some steps, these have not been unreasonable, and I attach a significant portion of the problem to the nature of the dwelling itself, as opposed to the conduct of any one party or the landlord, together with the tenants willingness to rent the premises knowing there were inherent sound transfer issues.

The suggestions by the landlord that the tenant's could chose not to continue the tenancy after the ending of their fixed term are not proven to be instances of bullying. I note in particular that the landlord was simply reiterating what the tenancy agreement already stated, and what the tenants knew or should have known, that the tenancy would end following the expiry of the fixed term. Indeed the tenants admitted at the hearing that the landlord had in some respects bent over backward to assist them, including times when they were in arrears and he agreed to carry them financially.

What I consider to be the most important aspect of the tenants' claim is that there were periods when they had insufficient hot water. I acknowledge that the tenants acted childishly and inappropriately in how they handled this issue, such as by reducing the hot water available to the upper tenants, or even turning the water off entirely. Their conduct exacerbated an already difficult situation. Nevertheless, it is a basic element of any tenancy, that tenants have access to a reasonable amount of hot water. I am satisfied that the tenants were not provided sufficient hot water by the landlord in this case. I find the number of persons permitted by the landlord to reside in the building exceeded the capacity of the building to provide the service of hot water. A potential solution by the landlord would have been to install a supplementary hot water heater that serviced only the lower unit. Alternatively, the landlord could have installed a larger or much more efficient hot water heater to service all the occupants. Additionally, the landlord could have been more diligent in scheduling time of usage of hot water. The failure of the landlord in this regard has resulted in a loss of quiet enjoyment of the tenants, related to insufficient hot water. The tenants are entitled to some compensation for this loss.

I find the tenants' calculations as to their loss of quiet enjoyment to be of no assistance. For one thing, they calculate their loss on the basis of all the alleged difficulties, most of which have been dismissed. Secondly, their premise in making calculations essentially compensated them for the loss of use of the entire premises, even though they continued to enjoy the premises for many purposes, such as eating, cooking, sleeping, entertaining, and storing their possessions, to name a few. Thirdly, the tenants contributed to the problem of no hot water, by turning down the hot water heater, which

limited hot water not only to the upper tenants, but also to themselves.

Quantifying compensation is not an exact science, and there are factors I choose to consider to be relevant in making this determination. I note that no application for repair or compliance was made by the tenants until April 16, 2014, suggestive that the problem may not have been significant prior to that point. I further note that the tenants elected to enter into a new fixed term tenancy agreement with the landlord on February 1, 2014. As they had not filed any claim over this issue prior to that time, and allowing for a grace period for the landlord to take steps after a complaint was made, I find for the purposes of their claim, that compensation should not be awarded for the period prior to February 1, 2014. Under the circumstances of this case, I find it appropriate that compensation be paid for a 3 month period, and that a factor of 10% of the monthly rent is appropriate for the loss quiet enjoyment suffered related to the lack of hot water. This translates into a sum of $125.00 per month, and a total of $375.00 payable by the landlord to the tenants.

Conclusion

The tenants' applications, other than the claim for loss of quiet enjoyment related to hot water, are all dismissed. The tenants are awarded the sum of $375.00, payable by the landlord to the tenants. As the tenants are successful as to 7.5% of their claim, they may also recover 7.5% of their filing fee from the landlord. This amounts to a further $3.75. The total sum payable by the landlord to the tenants is therefore $382.50.

The landlord is granted an Order of Possession, effective 48 hours following service upon the tenants. No order for recovery of the landlord's filing was sought, or is made.

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: June 06, 2014

Residential Tenancy Branch