



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and for an order that the landlord comply with the Act, Regulation, or tenancy agreement.

Both the landlords and tenants attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

- Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?
- Are the tenants entitled to an order that the landlord comply with the Act, Regulation, or tenancy agreement?

Background and Evidence

The tenancy agreement signed by the parties on June 29, 2012 indicates the tenancy started July 1, 2012. The tenants are obligated to pay rent of \$800.00 monthly in advance by the first day of the month, and one-third of the utilities. They also paid a security deposit of \$500.00.

The tenants' rental unit is the lower floor of a house; the upper floor is occupied by other tenants. The tenants claim the landlord has failed to properly deal with noise from the upstairs tenants and has improperly allowed the upstairs tenants to have a dog. The tenants seek compensation of \$2,000.00 based on these issues. The tenant also seeks an order that the landlord comply with the Act, Regulation, or tenancy agreement.

Noise issue

The tenants say they are only claiming a problem regarding noise after 10 p.m., and not noise that occurs during the day or early evening. The tenants say noise was a problem with the previous upstairs tenants and also with the current upstairs tenants.

The tenants emailed the landlord on February 11, 2013 at 2 a.m. to say the previous upstairs tenants had people over and were talking/laughing loudly. They also said it happened quite frequently that there was loud noise late at night.

The tenants say the previous upstairs tenants told them they would be having a party on February 15, 2013. The tenants asked that the noise end by 10:30 p.m. However, the party went on until 2 a.m. The tenants say they texted and phoned the upstairs tenants but there was no response. The tenants then called the landlord. The landlord sent an email to the tenants at about midnight (while the party was still in progress) to say he had spoken with the upstairs tenants, asked them to finish the party as soon as possible, and when their friends visit in future to use a different room that is not over the tenants' bedroom. The landlord's email also says the upstairs tenants told him the last time they had a party like that was August and this time there was no music.

The tenants also contacted the police at about 10:25 p.m. the night of the party. The following day (February 16, 2013), they wrote to their member of parliament to complain that the RCMP who attended did not speak to them while at the property, but only to the upstairs tenants. They also complained that when the RCMP called them back later that night the RCMP said the upstairs tenants were not in violation of the noise bylaw.

The tenants responded to the landlord's email on February 16, 2013, to say that the upstairs tenants have social gatherings very frequently. The tenants asked the landlord to tell the upstairs tenants to be quiet after 10:30 p.m. The tenants followed up with another email on February 24, 2013. The landlord responded two days later; he said he told the upstairs tenants they could not have parties more than once a month (a frequency previously agreed to by the tenant) and asked them to not sit in the living room when people are over (since the living room is above the tenant's bedroom).

Police reports provided by the tenants indicate the tenants called the police twice in August 2013 regarding the previous upstairs tenants, once at 11:45 p.m. and once at 10:39 p.m.

The landlord emailed the tenant on September 8, 2013 to say he and his wife had met with the upstairs tenants to discuss noise. The upstairs tenants told the landlord that the night of a party the police waited outside for 15 minutes to check for noise before they knocked, and did not hear noise. The landlord suggested the tenant contact the upstairs tenant directly the next time there is a problem.

The tenants gave evidence that they complained to the landlord about the previous upstairs tenants about twice a month. The landlord disputes that amount, and says the emails provided represent all of the tenant's complaints.

The current upstairs tenants moved in February 2014. On April 5, 2014, the tenants emailed the landlord to say the new upstairs tenants made noise that sounds like hammering after 10 p.m. The tenants' email said they had heard the new tenants several times making noise at 2 or 3 a.m. The landlord responded the next day to say he had just spoken with the upstairs tenants and has asked them to be quiet after 10 p.m.

On April 12, 2014, the tenant emailed the landlord to complain that the female upstairs tenant had been playing piano at 11:15 p.m. the previous evening. She said she knocked on the door to ask her to stop, but the upstairs tenant refused. The tenant then called the RCMP.

The tenant texted the landlord during the day on May 17, 2014 to complain the upstairs tenant was playing piano; the tenant was trying to nap before a night shift. The landlord texted back within an hour to say he called the upstairs tenants and asked them to stop playing piano. He said the upstairs tenants told him they were entitled to live a normal life.

The tenant emailed the landlord the afternoon of June 25, 2014 to say that the female upstairs tenant had walked around the house in high heels for about an hour the previous night at about midnight. She said the tenant wore high heels in the house every day. She also said the tenants had been playing music after midnight the previous night. The landlord responded by email two days later; he said he asked the upstairs tenants to be quiet after 10 p.m. and to follow the city noise bylaw.

The tenants emailed the landlord late on the evening of July 15, 2014 to say they had been woken up by the upstairs tenants coming home and "doing a lot of loud pounding on the floor multiple times". The landlord emailed the upstairs tenants to report the complaint and to tell them to make more effort to be quiet after 10 p.m. The landlord also wrote a long email to the tenant, saying the landlord had put a lot of effort into trying to resolve problems between the tenants. The landlord wrote that the upstairs tenants (previous and current) had different stories than the tenant had about the incidents the tenant complained of. The upstairs tenants emailed the landlord a few days later with their side of the story; they said they arrived home July 15, 2014 and were putting clean dishes away when a jar fell on the floor.

The landlord gave evidence that whenever the tenant complained about noise, the landlord visited the rental property, spoke with the upstairs tenants, and reported the conversation to the tenants by follow-up email. The landlord's evidence is that they have worked with the current upstairs tenants to try to minimize noise, for example by not having parties and not wearing shoes in the house. The landlord's evidence is that he suggested the tenants move to a

building with better sound insulation but “She insists on living in this environment while refusing to adjust her expectations.”

The landlord gave evidence that he encouraged the downstairs and upstairs tenants to meet with each other to improve communication, however the tenant refused. He says that when the downstairs tenant complained about daytime noise (the tenant works shift work), he suggested the tenant provide the upstairs tenant with a copy of her work schedule however she did not do so.

The landlord also gave evidence that the accounts he heard from the tenant differed from the accounts of both the previous and current upstairs tenants. He provided copies of letters written by both the previous and current upstairs tenants.

The current upstairs tenants sent the landlord an email on May 15, 2014 which reads in part:

“The police just left. This time the officer [officer name] told us that we have the right to live a normal life, such as singing, playing piano, doing laundry, having friends over, as long as not later than 11:00 pm. ... We now think that no matter how reasonable we are, the lower tenants will always find excuses to complain...”

The current upstairs tenants wrote the landlord an email on July 2, 2014 which reads in part:

“[Female downstairs tenant] seems to be a person that likes to complain about anything and everything. When we first moved in, I tried to have a cordial relationship by introducing myself and mentioning that we have a small dog. We were met with stern faces and a “We’ll have to see about that” comment. They never smiled or even introduced themselves. The only time [female downstairs tenant] communicates is when she is complaining.

[Female upstairs tenant] tried to communicate with [male downstairs tenant] about her desire to play her piano occasionally and asked him about their work schedule. [Male downstairs tenant] mentioned to her that they don’t have a fixed working schedule. He gave her a copy of the Surrey noise by-law and said that they expect us to be quiet ‘24/7’. He also threatened her by saying that they had the previous tenant fined \$2,000 for each noise infraction, so that eventually the previous tenant had to leave.

Shortly after this, they started calling the RCMP about trivial noise complaints. The last time, [female downstairs tenant] complained about us doing a laundry. She must have called the RCMP immediately after 11pm because an officer showed up at our door around 11:30pm. The officer was somewhat embarrassed, but it was his duty to investigate. While I was talking to him, I overheard the dispatcher call him to see about the ‘laundry incident’. It must have been an inside joke for the police department that

night. If [female downstairs tenant] could have waited about 10 minutes, the whole situation could have been avoided, as the laundry cycle would have finished.”

The landlord provided an emailed statement from the previous tenants (dated August 18, 2014), which reads in part:

“When [female downstairs tenant] moved in, she frequently complained about noise from upstairs, even when we did not have people over. Our living room was directly above her bedroom and she would complain even if we walked around in the living room.

However, we chose to be considerate and chose not to use the living room at all. Even if we had a guest or two, we would ask them to sit in the family room, so we did not give [female downstairs tenant] a reason to complain. As [landlord] advised, we kept parties to a minimum.

During our year-and-a-half stay, only two parties were held at your house, both of which were in recognition of important events. These events, which provided opportunities for friends and relatives to catch up, were far from loud. One did not even involve music. We provided the downstairs tenant prior notice on both occasions but she still contacted the RCMP on both occasions. On both occasions, RCMP officers waited outside the house for fifteen minutes, trying to hear loud noise or music before knocking on our doors. They knocked at our door and were very polite and informed us that the noise level was acceptable. We wish to state that we were never fined by the officers or even issued a warning. ..”

Dog issue

The tenants' position is that the landlord should not have rented the upstairs suite to tenants who have a dog, because they were told no pets and because the upstairs suite was advertised as no pets. The tenants say the male tenant has an allergy to dogs. The downstairs tenants are now separated and the male tenant has not lived downstairs since June 2014.

The landlord says they never promised the downstairs tenants that there would be no pets in the house; there was no discussion of pets. The landlord gave evidence that they would have preferred to rent the upstairs to tenants without pets, however they were trying to find tenants they thought would be relatively quiet. They selected the current upstairs tenants because they are a couple without children. The landlord says the tenants did not advise them in advance of any allergy issues.

Analysis

The parties both provided copies of the email exchanges between them. The tenants claim there were also times they complained to the landlord by telephone but did not follow up with an

email. The landlord says that he followed up on all complaints, including those originally made by telephone, with an email. The landlord says the emails provided represent the entire exchange.

According to Residential Tenancy Policy Guideline 6 “Right to Quiet Enjoyment” (the “Guideline”), a tenant’s right to quiet enjoyment may be breached by “unreasonable and ongoing noise” although “[t]emporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.” The Guideline also says:

“A tenant does not have to end a tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it...”

A landlord is responsible to take reasonable steps to ensure that a tenant is not unreasonably disturbed by another tenant occupying the same building (once notified of a problem). What constitute “reasonable steps” will depend on the circumstances of each situation. Here, the photos of the house indicate it is an older wood frame building. Where there are multiple rental units within such a dwelling, ordinary living sounds from one unit will likely be audible in another unit. It would not be realistic to expect complete silence after a certain time of night.

I find that the landlord has taken reasonable steps to ensure the upstairs tenants do not unreasonably disturb the downstairs tenants. The landlord provided evidence to show he responded promptly to every complaint. I accept the evidence of the landlord and previous and current upstairs tenants that each of the upstairs tenants modified their behaviour in response to the landlord’s requests. For example, the current upstairs tenants stopped wearing shoes in the house and did not connect the speakers on their stereo. The current upstairs tenants have not repeated the specific behaviour complained of; for instance late night piano playing or doing laundry. I find the evidence provided does not support that the upstairs tenants (previous or current) caused late-night noise as frequently as the downstairs tenants allege.

Since I have found that the landlord has taken reasonable steps, the tenants’ right to quiet enjoyment has not been breached. For that reason, they are not entitled to compensation. Also, there is no need to order the landlord to comply with the Act, Regulation, or tenancy agreement.

I find that the landlord was under no obligation to refuse tenants who have a dog for the upstairs rental suite. He had made no prior agreement with the downstairs tenants that the building would be dog-free. For that reason, the tenants are not entitled to compensation regarding this issue.

For the reasons set out above, the tenants' application is dismissed.

Conclusion

The tenants' application is 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: September 18, 2014

Residential Tenancy Branch

