



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC; FF; O

Introduction

This is the Tenants' application filed June 6, 2014, for compensation for damage or loss under the Act, regulation or tenancy agreement; to recover the cost of the filing fee from the Landlord; and for "other" orders. On August 8, 2014, the Tenants amended their application to increase the amount of compensation sought.

The parties provided affirmed testimony during the Hearing.

It was determined that the Tenants served the Landlord with their original application, in person, on June 6, 2014, and that the Tenants served the Landlord with their amended application, also in person, on August 9, 2014.

It was also determined that the Landlord received the Tenants' supporting documentary and electronic evidence on August 22, 2014, and that the Tenants received the Landlord's documentary evidence on August 20, 2014.

The Tenants did not serve the Landlord with their evidence package within the time frames set by the Rules of Procedure. The Landlord stated that he felt "shanghaied"; however, he wished to go ahead with the Tenants' application and did not want an adjournment.

Issues to be Decided

- Are the Tenants entitled to compensation for loss of peaceful enjoyment of the rental unit and an Order that the occupants below the Tenants refrain from smoking on their balcony?

Background and Evidence

The Tenant GC gave the following testimony:

The rental unit is a suite in a multi-unit building. GC testified that in September, 2013, the Tenants met with the previous landlord to discuss entering into a tenancy agreement. He stated that it was important that the Tenants be assured that the rental

property was a non-smoking building and that they were assured by the previous landlord that smoking was absolutely prohibited, even on the balconies. GC testified that the Tenants noticed that the occupants in the suite below the Tenants (the “downstairs occupants”) were smoking on their balcony. GC testified that in October, 2013, he e-mailed the Landlord, who had taken over the rental property after the former landlord left. GC stated that the Landlord advised him that there was no non-smoking clause in the downstairs occupants’ tenancy agreement. GC testified that the Tenants kept their windows shut until they were ready to file an application because the smoke was disturbing their peaceful enjoyment of the rental unit.

GC testified that “after Christmas” the downstairs occupants started playing music with loud bass, which also affected the Tenants’ peaceful enjoyment of their home. He stated that he spoke to the Landlord “several times” between Christmas and February, 2014, before he wrote to the Landlord in February complaining about the noise. GC testified that the Landlord sent the downstairs occupants a warning letter, but the noise continued. GC stated that “for 8 days at the end of April, every day”, the downstairs occupants played music late into the night. GC stated that the Tenant SC spoke to the Landlord again, who spoke to the downstairs occupants and the music stopped “for a while”.

GC gave testimony about several other noise occurrences that took place after he filed his initial application for dispute resolution. GC testified that on June 6, the downstairs occupants were playing loud music again. He stated that he had to call the police on June 27, 2014, because of the noise. GC stated that the police came “45 minutes to one hour later”, but didn’t hear anything. GC provided a CD which he stated captured the noise. GC testified that loud music woke the Tenants on July 25, 2014.

GC stated that after he amended his application, there were two more incidents; one on August 17 and one on August 23, 2014.

The Tenants seek monetary compensation in the amount of \$4,888.50, comprised of the equivalent of three month’s rent and an additional \$2,000.00 for loss of peaceful enjoyment of the rental unit.

The Landlord DB gave the following testimony:

DB stated that the downstairs occupants’ tenancy agreement does not have any restrictions with respect to smoking on their balcony.

DB testified that the rental property is wood framed and was built in the 1961 and has no sound insulation in the interior walls. He stated that some units have hard wood floors and others are carpeted.

DB stated that he has received only one complaint from another occupant with respect to noise from the downstairs occupant, which occurred as a result of the August 23rd incident. DB testified that after he received the complaint from the other occupant and the Tenants, he provided a written warning to the downstairs occupant. He stated that he often did not receive the Tenants' noise complaints until days after the fact. He testified that he asked the Tenants to let him know about unreasonable noise at the time it was occurring so he could investigate it.

DB testified that, in an effort to address the Tenants' concerns about smoking and noise, he showed them two other suites within the rental property and offered to relocate them. DB stated that the Tenants were not interested in moving.

DB stated that he could not hear any noise when he played the Tenants' CD.

Analysis

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

This is the Tenants' claim for damage or loss under the Act, regulation or tenancy agreement and therefore the Tenants have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Landlord pay for the loss requires the Tenants to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenants provided insufficient evidence to prove their claim. I could not hear any music or bass on the CD provided in evidence by the Tenants. The building is an older building and therefore the sounds of day-to-day living carry more than in a more modern building. Although there is evidence that there was an occurrence on August 23, 2014, which also disturbed another occupant in the building, this happened after the Tenants filed their amended application and I find that the Landlord took reasonable steps to address the issue. There was no evidence that other occupants were disturbed by the downstairs occupants on any other occasion. The Landlord also offered two other suites in the rental property to the Tenants in an effort to accommodate them regarding their noise complaints and their concern about smoking.

There is no provision in the Act or regulation that prohibits smoking in or on rental properties. I find that there is no clause in the Tenants' tenancy agreement which provides that the rental property and surrounding grounds are non-smoking. Therefore, I find that the Tenants provided insufficient evidence that the Landlord has not complied with the Act, regulation or their tenancy agreement with respect to the downstairs occupants smoking on their balcony. I dismiss the Tenants' application for an Order that the Landlord comply with the Act, regulation or tenancy agreement.

The Tenants have not been successful in their application and therefore I find that they are not entitled to recover the cost of the filing fee from the Landlord.

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 25, 2014

Residential Tenancy Branch

