



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal LePage Advance Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement, and a monetary order.

The hearing was conducted via teleconference and was attended by the female tenant, her advocate and the landlord's agent.

At the outset of the hearing the tenant confirmed they vacated the rental unit on October 31, 2014. As such, I find the tenants' request for an order to have the landlord comply with the *Act*, regulation or tenancy agreement is moot and I amend the tenants' Application for Dispute Resolution to exclude this matter.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for the loss of quiet enjoyment, pursuant to Sections 28, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began on March 10, 2014 as a 6 month fixed term tenancy for the monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid. The tenancy ended on October 31, 2014.

The parties agree the residential property consisted of a duplex and that after the tenancy began new occupants moved into the adjoining unit on May 30, 2014. The parties also agree that almost right from the beginning the neighbouring occupants were disruptive and that the tenants immediately began complaining to the landlord about being unreasonably disturbed.

The landlord submits that they did take action against the neighbours by providing them warnings that their behaviour could result in a termination of the tenancy. The landlord has provided into evidence copies of correspondence with the neighbours including

these warnings beginning on June 5, 2014. The landlord also provided a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on August 5, 2014 with an effective date of September 30, 2014.

The tenants submit that after this notice was issued the neighbours' behaviour escalated and it got so bad that none of her family could get any sleep or any time that they could use their rental unit without some form of disturbance from the neighbours. The tenants moved out of the rental unit in late August but did not surrender possession and returned to the rental unit after the neighbours had moved out at the end of September 2014. The tenants seek the return of their payment of rent for the month of September 2014.

The landlord submits that they had also received complaints from the neighbours about these tenants and that a lot of the problem was just that the two sets of tenants just did not get along with each other. The landlord has submitted one email complaint from the neighbouring occupants about these tenants.

The tenant submitted that she had been in almost constant contact with the landlord through all of this and the landlord was aware that they were unhappy with their loss of quiet enjoyment. She stated that she asked to be let out of the fixed term tenancy but the landlord rejected this request. The landlord submitted that this discussion occurred late in September 2014 just prior to the effective date of the notice to end tenancy that had been issued to the neighbours.

Analysis

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

Based on the testimony of both parties I find that as a result of the neighbouring occupants' behaviour during their tenancy these tenants did suffer a loss of quiet enjoyment. I also find that the landlord did take reasonable steps to attempt to stop the behaviour and when this failed they issued the neighbours a notice to end tenancy.

However, despite receiving at least 3 complaints within the first month of the tenancy and a number of other complaints throughout the month of July 2014 the landlord chose to issue a 1 Month Notice on August 5, 2014. As such, under the requirements of Section 47 of the *Act* this meant the earliest the tenancy could end was September 30, 2014. However if the landlord had issued the 1 month notice prior to the end of July 2014 the effective date would have been August 31, 2014.

I find that by waiting until shortly after the start of August 2014 the landlord did in fact provide the neighbours with almost two more months that they could subject the tenants to the unreasonable disturbances that they had already been causing.

I find also that based on the testimony of both parties the disturbances were nearly constant and extremely disturbing. While the landlord has submitted that the neighbours had complained about the tenants I find there is little evidence provided by the landlord that any complaints the neighbours may have had about these tenants were of disturbances on the magnitude suffered by these tenants.

I also find that the tenants presented a reasonable option to the landlord of ending the fixed term early. I accept that the tenants likely raised the issue of the possibility of moving out of the rental unit with the landlord earlier than late September and the landlord had an opportunity at that time to consider the extremity of the disturbances and their effect on the tenants' loss of quiet enjoyment.

While I accept the landlords did take the appropriate steps to end the neighbours tenancy I find that the landlords failed to take into account severity of the disturbances and the importance of the timeliness of these actions to end the neighbours' tenancy.

As a result, I find that the tenants are entitled to compensation, in the amount claimed.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$900.00**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: November 20, 2014

Residential Tenancy Branch

