



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MULHOLLAND PLACE APARTMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RR, MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

The landlord and her agent (collectively "landlord") and both tenants attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. One tenant, CG, disconnected from the hearing at approximately 10:21 a.m. The other tenant, FS ("tenant"), confirmed that she was acting as the tenant CG's agent for the remainder of the hearing and had permission to do so. The hearing lasted approximately 189 minutes.

The tenant testified that she served the landlord with a copy of the application for dispute resolution hearing notice by placing it under the landlord's office door on September 8, 2014. The tenant further testified that she served the landlord with a copy of the tenants' first written evidence package by placing it under the landlord's office door on September 11, 2014. The tenant testified that she served the landlord with a copy of the second written evidence package, by placing it under the landlord's office door on October 22, 2014. Although this method of service delivery of placing documents under a door is not one that is allowed under Section 88 of the *Act*, the landlord confirmed that she did receive the notice and both packages of evidence. She also confirmed that she had reviewed all of the material provided to her by the tenants, and was notified of this hearing. Based on the sworn testimony of the parties, I find that the landlord received the tenants' dispute resolution hearing notice and both evidence

packages and that there would be no denial of natural justice in proceeding with this hearing and considering the tenants' application.

The landlord testified that she served the tenant with her hearing evidence package on October 18, 2014, via registered mail. She provided a tracking number to confirm same. The tenant testified that she did not receive the evidence. Section 88(c) requires the landlord to serve the tenant with a copy of the evidence by registered mail at the "address at which the person resides." The landlord testified that she served the tenant at her current rental unit address. Therefore, I find that although only one evidence package was sent to the tenant for both tenants, they would be served at the same rental unit address via registered mail. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the evidence on October 23, 2014, the fifth day after its registered mailing.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Are the tenants entitled to an order to allow them to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Preliminary Issues

The landlord testified that she issued two 10 Day Notices for unpaid September 2014 rent in the amount of \$1,800.00 total, including \$1,200 for unpaid rent and an additional \$600.00 for the unpaid pet damage deposit. Neither party provided copies of the 10 Day Notices for this application. The landlord testified that both 10 Day Notices were effectively cancelled because the tenant paid the \$1,200.00 rent for September 2014 within the required 5 days on September 5, 2014. The landlord further testified that she was not asking for an order of possession at this hearing, as she did not wish to evict the tenants at this time.

Therefore, I advised the parties that both 10 Day Notices from September 2014 were cancelled and of no force or effect.

At the outset of the hearing, the tenants advised that they were planning to vacate the rental unit, effective November 30, 2014, and intended to give their one month notice on

October 31, 2014. The landlord testified that if this occurred, she would not be seeking the \$600.00 for the pet damage deposit from the tenants, unless the tenants decided not to move out. Based on the tenants' intention to vacate the rental unit effective November 30, 2014, the tenants withdrew their application for an order to allow them to reduce the rent for repairs, services or facilities agreed upon but not provided.

The hearing proceeded solely on the one outstanding issue regarding the tenants' application for a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement. The tenants specifically requested compensation for a loss of quiet enjoyment in their rental unit. Accordingly, the evidence and analysis outlined below, will deal with this one issue.

Background and Evidence

Both parties provided lengthy testimony and submissions at this hearing. Not all details of their respective submissions and arguments are reproduced here. Only the main and relevant aspects of the tenants' claim for a loss of quiet enjoyment, is provided in this decision.

The tenants testified that they suffered a loss of quiet enjoyment for two reasons: 1) the tenant in the rental unit below ("Neighbour 1") is smoking marijuana on a regular basis; and 2) the tenants in the rental unit above ("Neighbour 2") are very noisy on a regular basis. The tenants claim \$600.00 in damages, which includes \$100.00 for the marijuana issue and \$100.00 for the noise issue, each per month since they have lived in the rental unit for three months.

The landlord testified that this tenancy began on July 5, 2014 and is a month-to-month tenancy. Monthly rent is payable in the amount of \$1,200.00 on the first day of each month. A security deposit in the amount of \$600.00 was paid by the tenants on July 5, 2014. The landlord testified that a move-in condition inspection report was prepared on July 21, 2014 and it was enclosed with their written hearing evidence. However, the landlord clarified that the inspection report date was incorrectly dated for July 5, 2014, when it should have been dated for July 21, 2014.

Marijuana Smoking

Regarding this issue, the tenant provided oral testimony as well as a letter addressed to the landlord and the "The Landlord and Tenants Board," dated October 22, 2014, written by the tenant and signed by both tenants.

The tenant testified that the marijuana smoke problem began on July 5, 2014 and continued until approximately five days prior to this hearing. She testified that when both tenants were in their rental unit in the evenings at approximately 7:00 p.m., 8:30 p.m. and 10:00 p.m., they were exposed to marijuana smoke from the rental unit below them and one unit over to the left. The tenants testified that they did not notice the marijuana smoke during the morning or afternoons, except two times on October 12, 2014 (above) and July 7, 2014 around 1:00 p.m. The tenant testified that the smoke would come into the apartment through the patio door, causing her to close the door and turn on fans. The tenant advised that her bedroom window was above where the smoking occurred below on the patio. The tenant further testified that she smelled the smoke while she was having dinner, including with her family, and while watching television.

The tenant testified that the marijuana smoke made her cough a lot and irritated her lungs. She advised that she became ill with a lung infection on August 6, 2014 for three weeks. She told her doctor about the marijuana smoke and the doctor advised her that her lung infection may be due to the marijuana smoke but he could not conclude that as a certainty. He further advised her to turn on the fans in her rental unit to assist. The tenant provided a letter with her application, from her doctor, dated October 21, 2014, advising that she "has asthma and is on medications for it." The tenant confirmed that she has not suffered any further medical problems due to the marijuana, since the lung infection. The tenant advised that she missed two shifts of work and lost \$80.00 in wages due to coughing and throwing up from the marijuana. She did not provide any documentary evidence to support this missed time off from work. She further did not provide any medical documentary evidence that connected the marijuana smoke to any health problems.

The tenant testified that the other tenant, CG, did not suffer any medical issues due to the marijuana smoke and simply found the smell to be bothersome. The tenant testified that the marijuana smoke was inconvenient to both tenants because they would have to close their patio door, particularly during the hot summer weather.

The tenant testified that she notified the landlord verbally about Neighbour 1 on three occasions, once in July 2014 and twice in August 2014. The tenant testified that the landlord advised her that other people had complained about the marijuana smoke before and the issue was not resolved. The tenant testified that she was asked by the landlord to provide a written complaint in order for the landlord to take any action to correct the situation, but she did not want to cause conflict since she had just moved into the building. The tenants did not provide any written complaints to the landlord at any time regarding the marijuana smoke issue.

The landlord testified that she received three complaints from the tenant, regarding the marijuana issue, once verbally on July 21, 2014 during the move-in condition inspection of the rental unit, another at her office, and another when she received the notice of application of dispute resolution. The landlord testified that she did not receive any complaints from the other tenant in the rental unit, CG.

The landlord testified that she asked the tenant each time to provide a written complaint, as it was the policy of the landlord, as per the owner of the building, to confront tenants regarding complaints with written proof. The landlord testified that other tenants could not be disturbed in their rental units regarding verbal complaints, if they were not smoking in the common area. The landlord confirmed that once a tenant is confronted with a complaint letter from the landlord, the tenant usually apologizes to the affected tenant for their behaviour.

The landlord testified that she only received one other verbal complaint regarding Neighbour 1, prior to September 12, 2014, from another affected tenant in a different unit. She testified that it was mentioned casually and that tenant did not file a written complaint because it was not a big concern. The landlord testified that she has not received any other written or verbal complaints regarding marijuana smoke in the two years that Neighbour 1 has been residing there.

The landlord testified that she received what might be considered a “written complaint” from the tenants when they filed their application for dispute resolution. The landlord testified that she sent a warning letter regarding the marijuana complaint on September 12, 2014 to Neighbour 1, under his door, asking him to abide by the tenancy agreement regarding conduct. The landlord testified that she showed this letter to the tenant in her office, and the tenant confirmed this in her testimony. The landlord testified that she has not received any further complaints regarding Neighbour 1 or marijuana smoke, since this warning letter.

Noise Complaint

Regarding this issue, the tenant provided oral testimony as well as a letter addressed to the landlord and the “The Landlord and Tenants Board,” dated October 22, 2014, written by the tenant, FS, and signed by both tenants.

The tenant testified that the tenants above her rental unit, consisting of a family with two parents and two children, are very noisy every day, usually in the evenings between 6:00 p.m. and 1:00 a.m. The tenant testified that the noise has reduced and was ending by 11:00 p.m. by the third week of September 2014. The noise occurs inconsistently

usually every ten minutes and is not a continuous noise, lasting anywhere from ten minutes to twenty minutes in length.

The tenant testified that the noise includes dragging chairs on the patio, walking hard or stomping on the floor, children screaming, playing, jumping on the beds and fighting, frying food and banging pots/pans outside on the patio above, slamming the patio door and banging drawers. The tenant testified that the noise causes her light fixtures to shake and causes her and the other tenant CG to turn the television louder, to lose sleep and wake up early. The tenant testified that the other tenant CG missed work and was late to work, due to the noise from Neighbour 2. The tenant CG did not testify as to this late or missed time from work, and did not produce any documentation from his employer stating that he was late or missed time from work.

The tenant testified that she notified the landlord about the noise issue with Neighbour 2 on three occasions, stating that there was a lot of noise from upstairs but not explaining the types of noise or which unit was involved. The tenant testified that she notified the landlord in person at the landlord's rental unit, regarding the noise. She was intending to have the landlord come over to witness this noise but declined as the noise stopped and only got louder late at night, when she did not want to bother the landlord.

The tenant testified that she did not provide any written complaints as requested by the landlord because she was afraid of causing conflict as a new tenant. She said that she was afraid that Neighbour 2 would make more noise after her complaint and she did not think the landlord would want to address her issues. The tenants did not talk to Neighbour 2 directly regarding the noise complaints.

The landlord testified that she was notified about the noise complaint verbally by the tenant on July 21, 2014, during the inspection of the rental unit. The landlord advised the tenant that the noise may be due to the two children that were living upstairs. The landlord asked the tenant to file a written complaint but the tenant declined. The landlord did not receive a noise complaint from the tenant CG at any time during this tenancy. The landlord testified that she notified Neighbour 2 to keep the noise down, a few days after July 21, 2014, citing the tenants' noise complaints. The landlord testified that Neighbour 2 apologized to the landlord's husband regarding the noise at one time, as he explained that his children had a sleepover and he knew that there were new tenants living below.

The landlord testified that she was notified by the tenant, while in her office, on another occasion regarding Neighbour 2. On October 15, 2014, the landlord was again

approached at her own unit by the tenant, regarding Neighbour 2, but she was not invited over by the tenant to witness any noise.

The landlord was not given any details regarding the noise complaints. The landlord testified that no complaints by any other tenants have been made regarding noise from Neighbour 2, whether verbally or in writing, in five years. The landlord further testified that the previous tenant in the current rental unit never complained in four years regarding any noise from Neighbour 2.

Analysis

While I have turned my mind to all the documentary evidence, including the tenancy agreement, miscellaneous letters, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. In this situation, the tenant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove on the balance of probabilities that the landlord caused them damage or loss, which affected their right to quiet enjoyment.

Section 28 of the *Act* deals with the tenants' right to quiet enjoyment:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;...

Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*.

The landlord described an appropriate process that she has initiated to address these matters with the tenants' neighbours. The landlord testified that she requires complaints to be in writing, in order to show proof to other tenants regarding the complaints. She stated that unless a problem such as smoking was occurring in a common area used by all tenants, she requires written proof to confront the tenant and disturb them in their own rental unit. She stated that in the past, when she has confronted tenants, they have apologized and worked out their issues. She testified that she has not seen any negative consequences from this confrontation process. The tenants did not provide any written complaints to the landlord regarding the marijuana or noise complaints, which they admitted in their testimony. They simply provided verbal complaints on a few occasions regarding each issue. In my view, the tenants did not find the issues to be important enough to warrant written complaints to the landlord. The tenants were more concerned that they were new in the building and did not want to start conflict.

Despite not having received any written complaints from the tenants, the landlord still dealt with the tenants' issues. She confronted the upstairs tenants regarding the noise issue, advising them that there was a complaint from the tenants and to keep the noise down. The upstairs tenant apologized to the landlord regarding the noise from their children's sleepover. The landlord also issued a written warning to the tenant below regarding the marijuana issues, not from having received a written complaint directly from the tenants, but due to this hearing application.

The landlord confirmed that she received no complaints regarding the noise issue from any other units in five years. The landlord only received one other verbal complaint regarding the marijuana issue and that tenant did not provide any written complaint because the issue was not severe enough. The landlord has not received any other complaints from other tenants. The tenant testified that the noise level has reduced in the upstairs unit. I find that the landlord dealt with both the marijuana and noise complaints appropriately.

The tenants have also failed to provide any witness testimony or written documentary evidence to demonstrate that the other tenants or the landlord caused them damage or loss. The tenants have not provided any written evidence that their health problems are caused by marijuana directly. The tenants have not provided any written evidence from their employer or otherwise that they were late for work, missed time off from work or lost wages, due to the noise complaints. They have not provided evidence to substantiate the \$600.00 claimed in damage and loss.

The tenants have not met their burden of proof on a balance of probabilities, that the landlord caused them damage or loss, which affected their right to quiet enjoyment, and

the landlord failed to take appropriate action to follow up on their complaints about their neighbours. Therefore, I dismiss the tenants' application for a monetary order for compensation for damage or loss pursuant to section 67 without leave to reapply.

Conclusion

Both 10 Day Notices from September 2014 are cancelled and of no force or effect.

The tenants' application to reduce the rent for repairs, services or facilities agreed upon but not provided, was withdrawn.

I dismiss the tenants' application for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement without leave to reapply.

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 17, 2014

Residential Tenancy Branch

