



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF, O

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the Act, Regulations or tenancy agreement; other issues; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on February 04, 2015. Canada Post tracking numbers were provided by the tenants in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenants appeared; the male tenant CT gave sworn testimony on behalf of both tenants and was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

- Are the tenants entitled to an Order for the landlord to comply with the Act, regulations or tenancy agreement?

Background and Evidence

CT testified that originally he was an occupant of the unit with the former tenants. CT took over the tenancy on November 01, 2013. Rent for this unit is \$680.00 per month and is due on the 1st of each month.

CT testified that since April, 2014 CT and his partner BW have suffered a loss of quiet enjoyment of the rental unit due to the landlord's behaviour. This started in April, 2014 but escalated between May and August, 2014 and continued until October in one way or another.

CT testified that the landlord had not been taken her medication and was drinking heavily. This resulted in significant disturbances to the tenants who rent the lower unit while the landlord resided in the upper unit. The landlord would start to do laundry in the common area as early as 4.00 a.m. and slam doors and lids of the washer which woke the tenants. The noise would continue after the landlord went to her own unit with things being smashed and with, screaming and yelling. The landlord also started to skip rope in her unit which significantly disturbed the tenants below. These incidents occurred almost on a daily basis.

The tenants would be forced to call the police; however, were advised that unless the landlord damaged the tenants' property or caused them harm the landlord could behave as she wished in her own unit. Sometimes the police would come out and calm the landlord down; this was successful occasional but more often the landlord would start making noise again as soon as the police left. CT testified that on two occasions the landlord broke windows in her own home which resulted in broken glass coming down onto the tenants' area below. When the landlord throw a bag of cherry stones through

the landlord's own kitchen window the glass from that window rained down where the tenants were standing outside talking.

There was an occasion where the landlord flew into a rage about the tenants not picking up dog feces. CT testified that he explained to the landlord that his dog did not defecate in the front yard and that he always picked up any dog feces in the back yard. The landlord refused to believe the tenant and flew into a rage. The landlord would throw kitchen drawers around in her unit while in a rage and would start screaming and shouting.

CT testified that they were woken every day by the landlord's behaviour and some days it was so bad the tenants had to leave their home early in the morning. CT testified that they did attempt to talk to the landlord about her actions but were unsuccessful so the tenants have been trying to find somewhere else to live. In October, 2014 the landlord was involved in an incident outside the home which resulted in the landlord being placed under psychiatric care. Since that time the landlord has started taking her medication again and has stopped drinking so the incidents have stopped since October.

CT testified that although the incidents have stopped for the present the tenants are still actively seeking to move from the unit. The tenants seek compensation from the landlord for a loss of quiet enjoyment of their rental unit during the particularly difficult months between May and August, 2014. The tenants seek to recover the rent paid for these months of \$2,720.00.

The tenants had sought an Order for the landlord to comply with the *Act* with regard to the tenants right to quiet enjoyment; however, CT testified that as the landlord is now complying with the *Act* no further Order is sought and the tenants withdraw this section of their claim.

Analysis

With regard to the tenants' claim for compensation due to the landlord's actions which breached the covenant of quiet enjoyment. The *Act* establishes rights to quiet enjoyment, which include, but are not limited to:

- Reasonable privacy
- Freedom from unreasonable disturbance,
- Exclusive possession, subject to the landlord's right of entry under the Legislation, and
- Use of common areas for reasonable and lawful purposes, free from significant interference.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenants have the burden of proof and must show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased.

Frequent and ongoing interference by the landlord may form a basis for a claim of a breach of the covenant of quiet enjoyment such as unreasonable and ongoing noise. I have considered the tenants' undisputed documentary evidence and testimony before me and find there is a case for a breach of the covenant of quiet enjoyment. I accept that during the period between April to October, 2014 the tenants suffered a loss of quiet enjoyment of their rental unit through the actions of the landlord. These incidents escalated between May and August 2014. The level of noise and disturbances from the landlord clearly affected the tenants' living conditions in the unit and subsequently I must find in favor of their request for compensation under s. 28 of the *Act*.

In determining the amount by which the value of the tenancy has been reduced, I have taken into consideration the seriousness of the situation and the degree to which the tenants have been unable to use the premises, and the length of time over which the situation has existed. It is therefore my decision that the amount claimed is not a true

reflection of the level the value of the tenancy was reduced by for the four months between May and August. The tenants have not shown that these noise incidents occurred continually throughout the day and evening. I therefore find I must limit the tenants' claim to half a month's rent in compensation for each of the worse affected months of May, June, July and August to a total amount of **\$1,360.00**.

As the tenants' claim has merit I find the tenants are entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,410.00**. The Order must be served on the respondent. If the respondent fails to pay the Order, the Order is enforceable through the Provincial Court 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: March 04, 2015

Residential Tenancy Branch