Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, O MNDC, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing by registered mail to where the landlord resides on March 11, 2015.

Preliminary Matter:

On April 14, 2015 the landlord applied for an adjournment. The tenant opposed the application. After hearing the disputed submissions I determined that an adjournment was required for the following reasons:

a. The named landlord who is the building manager and person most knowledgeable of the situation was out of the country in Europe. I determined her evidence was required in order to make a proper determination on the merits.
b. FF, who is the agent for the company that owns the rental unit was scheduled for surgery;
c. This matter involves a dispute between the applicants and the downstairs tenants. I determined that the downstairs should be given notice of these proceedings and an opportunity to attend as they could be affected by the decision..

As a result I ordered that the matter be adjourned. I further ordered that the other set of tenants be served with a copy of the within Application for Dispute Resolution/Notice of Hearing. The hearing was reconvened on June 2, 2015. The other set of tenants failed to appear.

Issue(s) to be Decided:

The issues to be decided are as follows:

a. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?

b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on December 1, 2013 when the parties entered into a one year fixed term written tenancy. The tenancy agreement provided that the tenant(s) would pay rent of $1210 per month payable on the first day of each month. The tenant(s) paid a security deposit of $300 in November 2013. The tenancy ended at the end of April after the applicants vacated the rental unit.

The rental property is owned by a family corporation. FF is one of the two shareholders in that corporation. It has owned the property for approximately 50 years. TH, the named landlord in this application is the building manager of the rental property for the last 12 years. The building manager lives in the rental unit adjacent to the downstairs tenants. The applicants live in the rental unit located immediately above

The Amended Application for Dispute Resolution filed by the tenants on April 1, 2015 seeks a monetary order in the sum of $12,380.62 against the landlord alleging that the landlord failed to protect the tenant from harassment from the downstairs tenant and violations of their tenancy rights. The tenants seek the following:

- Reimbursement of 5 months rent (5 x $1150 =$5750)
- Reimbursement of 3 months rent (3 x $1175 = $3525
- Lost wages
- Reimbursement of hydro paid
- Loss of quiet enjoyment in the sum of $2500
- The filing fee in the sum of $100.

The applicants testified they have endured harassment and unfortunate experiences at the hands of the downstairs tenant since August 2014. The applicant testified that she has made a number of oral complaints to the landlord. The first formal complaint made by the applicants is an e-mail dated March 5, 2015 and identifies the following complaints:

- Personal complaint from the female downstairs tenant about dripping water from one of their seven plant pots
- Second complaint relating to the same issue
- Intentional loud and angry smashing on the walls or ceiling coming from the downstairs tenant at all hours of the day and night.
- Verbal complaint from the landlord that the downstairs tenant had complained to the landlord about the applicant's one year old son learning to walk in his home at around 5:00 p.m. on a Sunday.
- Loud smashing on the walls and ceiling at 6:00 a.m. as the applicant was getting ready for work followed by another inappropriate and angry outburst and an eviction threat from the downstairs tenant.
- Two days later an incident in the laundry where the downstairs tenant slammed the door on another tenant.

The letter also states "We appreciate the verbal efforts you have made with regards t this serious issue with said tenants. Thank you for the support you have given to us so far."

The landlord arranged for the two tenants to meet at her place on March 5, 2015 in an effort to allow the tenants to air their grievances. The meeting was two hours in length and was not successful. On March 6, 2015 the applicants made a second formal complaint to the landlord. The complaint states that they were unable to address their concerns because the downstairs tenant kept talking over him. It also states the downstairs tenant made threats and that she was forced to listen to contradictions and lies. The landlord replied stating that they had received their complaints and were working on a solution. At the hearing the applicants alleged the landlord favoured the other tenants. The landlord denies this.

On March 7, 2015 the tenant gave a third formal complaint to the landlord identifying further problems and insisting that the landlord follow up with giving the downstairs tenant a breach

letter setting out the details of their complaint, that they must cease harassment immediately and what would happen if they failed to do so.

On March 9, 2015 the tenants filed an Application for Dispute Resolution. The applicants testified they served the Application by mailing, by registered mail to where the building manager resides on March 11, 2015.

On March 16, 2015 the applicants sent a letter to TH that was entitled Written an Formal complaint #4 complaining about the banging on the ceiling and walls emanating from the downstairs tenants. The letter demanded that a breach letter be sent to the downstairs tenants.

The applicant produced the copy of a document entitled Formal Complaint #6 Harassment which complained that the downstairs tenants were banging on their door at 6:48 a.m. which occurred shortly after the male applicant had left for work. It states I am insisting on eviction.

The applicants produced a copy of a document call Formal Complaint #7 Harassment breach of Peace and Quiet Enjoyment where the applicants complained of a barrage of banging.

The tenants also produced audio evidence of the meeting of March 5, 2015. I did not find that evidence helpful. The applicants failed to tell the downstairs tenant or the landlord they were taping the conversation. At any rate the landlord complied with the applicants' subsequent request to send a breach letter. Further, it was an attempt to try to settle an outstanding dispute and efforts of settlement should not be admissible in a hearing such as this.

Landlord's Evidence:

FF, the agent for the company that owns the rental property testified as follows:

- The company that owns the rental property is a family run company that has own the property for approximately 50 years.
- No one has ever been evicted from this building although they had to deal with a problem tenant approximately 30 years ago.
- The Property Manager and named landlord has worked for the landlord for 12 years. She has received praise from many tenants as a careful manager.
- The building is a wood frame structure and noises travel.

- Throughout the history or the building disputes between tenants and tenants and landlord have been resolved through discussion.
- The landlord had difficulties dealing with this situation as they were receiving complaints from both sides and there was insufficient independent evidence to verify one side or the other. The landlord was concerned that the giving the competing complaints and in the absence of independent evidence the landlord would not be successful had they took steps to end the tenancy.
- On March 16, 2015 FF wrote the downstairs tenants a lengthy caution letter raising the complaint of the applicants and stating that "unless you cease deliberately disturbing other tenants, that we will take steps to end your tenancy."
- FF wrote the applicants advising them she sent a breach letter to the downstairs tenants.
- On March 18, 2015 she received a letter from the downstairs tenants alleging the upstairs tenants were again causing excessive noise.

TH, the Property Manager and named landlord testified as follows:

- She became aware of the conflict between the applicant and the downstairs tenant. Since October 2014 each has accused the other of creating unacceptable noise.
- TH testified she tried to work with the parties to mediate their difficulties.
- In January 2015 she distributed a notice to all tenants requesting that all tenants refrain from making unnecessary loud noises and requesting that they walk softly on the hardwood floors.
- On February 22, 2015 TW received a complaint from another tenant about the male tenant from the downstairs unit. She investigated and visited the downstairs tenant. He denied responsibility stating he uses a different laundry in the building.
- The first written complaint from the feuding tenants was given to the landlord on February 28, 2015. The complaint listed 12 separate incidents with dates and times where the applicants allegedly disturbed the downstairs tenant. It also identified an incident that occurred on February 28, 2015.
- TH testified that she has met with both parties separately and attempted to resolve the matter.
- On March 5, 2015 she arranged for a meeting with the hope of resolving the problem. Unfortunately, neither party was prepared to work together.
- The applicants filed their Application for Dispute Resolution on March 9, 2015.

- TH testified that at this stage there was not independent evidence to confirm one side or the other.
- On March 11, 2015 the landlord wrote the downstairs tenant stating she could hear her music and asked her to turn it down. On March 12, 2015 she received an email response complaining about noise from the applicants and asking for the harassment to stop.
- After receiving the letter from the applicants demanding a breach letter be sent to the downstairs tenant, TH testified she delivered a letter requesting that they not bang on the walls excessively. The downstairs tenant denied responsibility.
- Throughout the process she advised both parties to contact her by telephone or by knocking on her door when they have heard ongoing noise from the other unit.
- On March 18, 2015 TH received a letter from the downstairs tenants complaining about excessive noise over 3 extended periods of time. At not point did the downstairs tenant advise her to come to her apartment to hear what she was describing.
- On March 26, 2015 the landlord received a letter of complaint from the downstairs tenant about excessive noise coming from upstairs.
- On March 26, 2015 TH received a letter from the applicants about loud big bangs coming from the downstairs unit and insisting that the landlord move towards eviction.
- In early April TH proposed to the applicants that the landlord would install carpeting (which might reduce noise to the downstairs tenants). The applicants adamantly refused saying they were not at fault.

Law

Policy Guideline #6 provides as follows:

> The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and **he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. (my emphasis)"**
> …
>
> A tenant does not have to end the 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.
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> 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 would not be held responsible for interference by an outside agency that is beyond his or her control, except that a tenant might be entitled to treat a tenancy as ended where a landlord was aware of circumstances that would make the premises uninhabitable for that tenant and withheld that information in establishing the tenancy."

The Supreme Court of British Columbia in Parhar Investments & Consulting Ltd. v. Brontman, 2015 BCSC 637 which involved a similar dispute between feuding tenants held that the an arbitrator's decision to award a tenant compensation for breach of the covenant of quiet enjoyment was patently unreasonable. The court held the arbitrator erred when she awarded damaged for breach of the covenant of quiet enjoyment where the arbitrator found no inappropriate conduct or neglect on behalf of the landlord.

Analysis

It may very well be that the applicants, the downstairs tenants or both may have claims against each other for nuisance, harassment etc. Such an action could be brought in Small Claims Court. However, that issue is not before me. I am asked to consider whether the tenants are entitled to compensation of over $12,000 against the landlord. The claim seeks is reimbursement of rent for eight months and damages for breach of the covenant of quiet enjoyment in the sum of $2500.

There is no evidence that the landlord has caused a disturbance of any sort. The issue then is whether the landlord has been negligent or stood idly by while the downstairs tenants interfered with the enjoyment of the rental property.

After considering the disputed evidence I determined the tenants failed to establish the landlord has breached the covenant of quiet enjoyment or was negligent or at fault for the following reasons:

- In the letter dated March 5, 2015, the applicants thank the Building Manager for her verbal effort made with regards to this serious issue and thank her for the support she has given to them so far. I determined the applicants were happy with the conduct of the

Building Manager and the landlord to that point. I do not accept the submission implied in the tenants claim that they can claim reimbursement of rent from August to March 5, 2015 where they were happy with the way in which the landlord dealt with the situation.

- The first formal complaint given by the tenants was on March 5, 2015. The landlord previously received a complaint from the downstairs tenant. Upon receipt of this complaint TH arranged a meeting at her apartment to give both sets of tenants an opportunity to air their grievances with the hope they could come up with a resolution. The meeting was held the next day.
- I do not accept the submission of the tenant that the landlord sided with the downstairs tenant at that meeting.
- The applicants demanded that the landlord send a breach letter to the other tenants. A breach letter was sent to the downstairs tenant cautioning them on their misconduct on or about March 17, 2015.
- It appears that many of the complaints about the misconduct of the downstairs tenant relates to banging on doors, ceilings and walls shortly after the male applicant left for work. He describes his conduct as normal user. I determined that the downstairs tenants were disturbed by his action. The building manager proposed the solution of carpeting the applicant's unit. This would reduce the noise and hopefully reduce the tensions. The applicants adamantly refused the proposal.

I do not accept the submission of the applicants that the landlord has been negligent or stood idly by while the downstairs tenant harassed and intimidated the applicants. The actions of the landlord should be commended. The tenants thanked TH for her efforts in their letter of March 5, 2015. I find that the applicants were happy with the way she handled the situation to that point. TH immediately attempted to resolve the problem through a face to face meeting with the feuding tenants. While this turned out to be unsuccessful the landlord must be commended for her efforts. As the situation deteriorated and after the applicants demanded that the landlord serve a breach letter on the downstairs tenants. The landlord complied and a breach letter was sent even though the downstairs tenants denied responsibility. The tenants adamantly refused the landlord's reasonable proposal to carpet the upstairs suite to reduce the noise. The landlord's efforts were reasonably and were not the actions of a landlord who is ignoring the problem.

In my view there was insufficient evidence to base a claim for the early termination of the tenancy. Giving the nature of the warring feud between the two sets of tenants there was no guarantee the landlord would have been successful had she served a one month Notice to End Tenancy on the downstairs tenants.

The very best the tenants could have expected from the landlord was the service of a one month Notice to End Tenancy prior to the end of March. That Notice would not have been effective until the end of April. It would have been longer if the downstairs tenants disputed the Notice. The applicants vacated the rental unit at the end of April.

As a result I ordered that the application of the tenants for a monetary order be dismissed without liberty to re-apply.

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: June 5, 2015

Residential Tenancy Branch