Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, OLC, FF

Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement ($25,000.00) / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / and recovery of the filing fee ($100.00). Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is located on the 3rd storey of a 4 storey wood frame, residential / strata complex.

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the fixed term of tenancy was from July 01, 2013 to June 30, 2014. Thereafter, tenancy continued on a month-to-month basis. Monthly rent was $2,200.00, and a security deposit of $1,100.00 was collected. By letter dated April 27, 2015, the tenant gave notice to end tenancy effective May 31, 2015. The disposition of the security deposit was settled directly between the parties without dispute following the end of tenancy. The tenant's application for dispute resolution was filed on June 12, 2015.

2 parties are named as the landlord / respondent in this application: the owner / landlord of the unit, and the owner / landlord's agent. While the owner / landlord did not attend the hearing, the owner / landlord's agent attended by way of 3 individuals.

For the information of the parties, section 1 of the Act addresses **Definitions**, and provides in part as follows:

> **"landlord"**, in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Following from the above statutory provisions, henceforth in this decision the owner / landlord and the owner / landlord's agent will be referred to as "the landlord."

The tenant alleges that there were breaches to his right to quiet enjoyment during the term of his 22 month tenancy. The alleged breaches arose from noise disturbances from renters living in the unit located immediately above the tenant's unit. During the term of tenancy, there were 2 different sets of renters residing above the tenant's unit. The tenant claims that the first set of renters resided above for a little less than his first full year of tenancy, while it is understood that the second set of renters resided above for the remaining 10 or so months of the subject tenancy.

The tenant testified that he initially raised concerns about noise directly with the upstairs renters. While evidence includes letters of complaint allegedly left with the upstairs renters, these are unsigned and generally undated. Documentary evidence also reflects that the tenant began to raise his concerns by email in September 2013 with the landlord and the strata's property management firm. The strata's property management firm responded in that same month, informing the tenant that "a letter was sent to the unit in question to address the concern."

In October 2013 the tenant again brought his noise related concerns to the landlord and the property's strata management firm, and in that same month by email dated October 09, 2013 the property's strata management firm informed the tenant, in part, as follows:

> ….Council reviewed and considered your complaint and the response from the other party. Council determined that you lodged several noise complaints against [the unit located above the subject unit]; however, the other party denied the noise disturbance. Under such circumstance, the complainant must submit the proof for Council's consideration. Before such a proof is submitted or the noise disturbance is established, it is not appropriate for Council to enforce bylaws. Therefore, Council requests that you submit any proof of noise disturbance to Council as soon as possible.

> Following receipt of your last night's email, we notified the owner of your latest complaint and she was required to reply [to] the complaint within 14 days as the Strata Property Act provides her with such a right.
>
> ---
>
> Please also note that per our record that the tenants in [the unit located above the subject unit] moved in well a few months prior to you.
>
> ---
>
> Also, on August 26, 2013, we received a noise complaint against your unit from your downstairs neighbour……

In reply to the above email, by email dated October 22, 2013, the tenant wrote, in part:

> I do not feel that I need to provide "proof" of noise disturbance…….
>
> I have been advised that due to loss of "peace and enjoyment", we are not required to provide proof of the ongoing disturbance of the inconsiderate "students" that reside above us, in order for you to impose an initial fine.
>
> Today we heard a ridiculous amount of noise beyond 11:30 p.m., and we do not need to provide proof of this, in order to take action / recourse above and beyond the Strata council attention.
>
> We have this proof, but I find it very insulting that you would ask a mature couple and family of three, with a 10 year old child for "proof." Additionally, we have been told by our lawyer, we are not required to provide proof of a noise disturbance, and that a complaint alone, is sufficient for the strata to impose fines.

Thereafter, documentary evidence related to noise complaints before me includes intermittent email exchanges which took place variously between the tenant, strata's property management firm and the landlord in November 2013, as well as in January, May, June, September, November and December 2014. There is no evidence of related email exchanges between the parties during the 5 month term of tenancy in 2015. Specific documentary evidence submitted by the landlord includes the following:

Notices dated July 28, 2014 and December 29, 2014 from strata's property management firm to the owner of the upstairs unit concerning the renters in the upstairs unit: BYLAW VIOLATION – NOISE COMPLAINT.

Notice dated December 16, 2014 from strata's property management firm to the owner of the unit which is the subject of this application concerning the applicant: BYLAW VIOLATION – NOISE COMPLAINT.

Analysis

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**, in part:

> 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline # 6 speaks to "Right to Quiet Enjoyment," and provides in part:

> 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 the covenant of quiet enjoyment. Such interference might include serious examples of:
>
> - unreasonable and ongoing noise;
>
> ---
>
> 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.
>
> 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 the 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.

Claim for damages

In determining the amount by which the value of the tenancy has been reduced, the Arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

An Arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises, or for the intentional infliction of mental suffering.

Based on the documentary evidence, the affirmed testimony of the parties, and in consideration of the above statutory and guideline provisions, below are my findings.

Further to the tenant's noise complaints about the upstairs renters, there is no evidence of any similar complaints made by other residents in the complex. Neither are there audio tapes in evidence, despite the tenant's claim in one of his letters to the upstairs renters, in part, that "we are recording all of your unnecessary, excessive noise….."

Additionally, other than a post-tenancy letter from the tenant's parents dated June 13, 2015, in which they speak to the existence of "unnecessary and perpetual loss of quiet enjoyment…….experienced [by the tenant] while residing at [the subject unit] between July 2013 – May 2015," there is no non-family, third party contemporaneous documentation, or a sworn affidavit before me which corroborates the tenant's claims concerning noise.

While there is reference by the tenant to calls made "several times" to the police, no related documentary evidence is before me in that regard, such as an incident report for example. Evidence includes an RCMP business card which does not bear the name of any particular officer or include a notation concerning any particular date.
As to frequency of noise disturbances from the unit above, beyond the tenant's emails which speak in broad and limited terms to the times / dates of disturbances, there is no log which sets out in more particular terms the times / dates of disturbances. I also note that there are a number of months during the term of the tenancy where no reference whatsoever to noise disturbances appears to have been made.

As well, while the tenant claims that his wife “developed anxiety related to the constant disruptions above us,” there is no related documentary evidence before me in that regard which supports the claim, such as a letter from a physician for example.

Finally, while the tenant made reference during the hearing to wage loss which arose indirectly from the noise and disrupted sleep and so on, neither is there any documentary evidence before me in that regard to support the claim.

While it appears that there were periodic disturbances arising from the activities of renters located above the subject unit, I am unable to conclude that they were daily or otherwise frequent in nature, or that they were consistently and seriously unreasonable. Further, I am persuaded that the nature of noise transference in multi-level, wood frame structures and the close proximity of residents to their neighbours, are such that the peace and quiet of all residents may reasonably be expected to be compromised from time-to-time, not necessarily through fault or inconsideration of any party. In the absence of sufficient and compelling evidence, I find that the tenant has failed to meet the burden of proving there was a breach to his right to quiet enjoyment as contemplated by the Act, or that the landlord “stood idly by” in response to the tenant’s related complaints. In the result, the tenant’s application must be dismissed.

Conclusion

All aspects of the tenant’s application are hereby 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: August 24, 2015

Residential Tenancy Branch