



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Apartments R Us
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, OLC, ERP, RP, PSF, FF

Introduction

This hearing was convened by way of conference call concerning the amended application of the tenants seeking the following relief:

- an order cancelling a notice to end the tenancy for cause;
- for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- for an order that the landlord comply with the *Act*, regulation or tenancy agreement;
- for an order that the landlord make emergency repairs for health or safety reasons;
- for an order that the landlord make repairs to the unit, site or property;
- for an order that the landlord provide services or facilities required by law; and
- to recover the filing fee from the landlord for the cost of the application.

One of the named tenants attended the hearing and represented the other named tenant. An agent for the landlord company also attended. The parties each gave affirmed testimony and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to question each other with respect to the evidence and testimony provided.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing the tenant withdrew the applications for:

- an order that the landlord make emergency repairs for health or safety reasons;
- an order that the landlord make repairs to the unit, site or property; and
- an order that the landlord provide services or facilities required by law.

At the conclusion of the hearing, the landlord's agent withdrew the notice to end the tenancy given to the tenant and the parties agreed that the tenancy continue. Therefore, I ordered that the 1 Month Notice to End Tenancy for Cause dated August 14, 2015 is hereby cancelled and the tenancy continues. As a result, the evidence and testimony of the parties that is relevant to the remaining applications of the tenants is considered in this Decision.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for aggravated damages for loss of quiet enjoyment?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this fixed term tenancy began on June 1, 2015 and the tenants still reside in the rental unit. The fixed term expires on May 31, 2016 and then reverts to a month-to-month tenancy. Rent in the amount of \$960.00 per month is payable in advance on the 1st day of each month as well as \$10.00 per month for a storage locker, and there are no arrears. Prior to the commencement of the tenancy the landlord collected a security deposit from the tenants in the amount of \$480.00 as well as a pet damage deposit in the amount of \$480.00, both of which are still held in trust by the landlords. A copy of the tenancy agreement has not been provided.

The tenant further testified that on June 28, 2015 he sent the landlord an email about repairs being required to the front door of the rental complex. On June 29, the tenant received an email from the landlord saying that the door had been repaired, but it was still broken and unlatched, so the tenant sent the landlord another email. The next day the landlord replied that it was being looked into. On July 4 the tenant sent another email to the landlord about the disruptive noise that the door was causing inside the rental unit but received no reply. The tenant sent another email on July 7. The landlord's evidentiary material shows that it was fixed on the 6th but it wasn't, and because no response was received by the landlord, the tenant had no idea that the landlord had tried to fix it. On July 8 the landlord emailed the tenant saying the door was repaired, and 30 minutes later the tenant advised that it was not satisfactory, and the landlord confirmed nothing would be done. The tenants were getting tired of the constant slamming and not providing security to the rental complex which is a requirement of the tenancy agreement.

The tenant further testified that the rental unit is an apartment in a 4-story complex and the tenants' unit shares a wall with the lobby and main door to the building. The tenants even had to remove paintings from that wall because they rattled every time the door closed. Another tenant was also disturbed and has provided a letter for this hearing. Rather than fix the door, the landlord issued caution notices to the tenants about excessive emails as well as a 1 Month Notice to End Tenancy for Cause.

The tenants seek \$16.66 per day from June 28 to August 21, 2015, being 55 days, or \$916.30 plus \$500.00 for the landlord's harassment in trying to evict the tenants causing stress, as well as 15 hours at \$25.00 per hour for the time the tenants took to research the *Act* and the Policy Guidelines and time having to communicate with the landlord while the landlord refused to provide information or make repairs, as well as \$200.00 for mental aggravation.

The landlord's agent (hereafter referred to as the landlord) testified that the tenant has continued to harass the landlord. June 28 was the tenant's first complaint about the door, and the next day the landlord emailed the tenant stating that the maintenance fellow was taking care of it. The tenant emailed again saying that the door was malfunctioning, loud, unlatching and not secure. The next day the landlord emailed the tenant asking that he not contact the landlord's maintenance fellow and that it was being looked into. The maintenance fellow told the landlord that the tenant had contacted him saying that he wasn't capable and telling the maintenance fellow how and when to fix it.

On July 2, 2015 the landlord ordered a new part and a new closer was installed. The maintenance fellow assured the landlord that it was working and the landlord didn't hear from the tenant again till July 8 asking when it would be fixed. The landlord replied that it had been fixed. Emails continued back and forth and the landlord advised that they were tending to the door.

In mid-July the landlord called the glass company supplier, but the contact person went on vacation. The landlord's agents put weather stripping on the door between July 28 and August 7, 2015. At the beginning of August the door started to jam, and within the first week or 2 in August a notice was posted for tenants. On August 14 the fire department was called because the door wouldn't open. They instructed the landlord to remove the locks immediately, which was done that day, and notices were posted in the building saying that the landlord was working to secure the building but had to remove the lock. The landlord had to wait for a complete door.

The landlord further testified that within the first month of the tenancy all repairs inside the rental unit had been completed, but the tenant raised it all for this hearing. Nothing was fast enough for him. The landlord never initiated an email to the tenant, only answered the tenant's emails. The tenant was not harassed in any way. The landlord tried to keep communication down to a reasonable level but the tenant did not, even threatening loss of quiet enjoyment before moving in. Numerous emails have been provided for this hearing.

Analysis

The tenants apply for aggravated damages for loss of quiet enjoyment and for time spent dealing with tenancy issues. In order to be successful in such a claim, the onus is on the tenants to establish that any damage or loss exists, that it exists as a result of the landlord's failure to comply

with the *Act* or the tenancy agreement, and what efforts the tenants made to mitigate any damage or loss suffered.

The tenant testified that the claim specifically seeks monetary compensation in the amount of \$16.66 per day from June 28 to August 21, 2015, being 55 days, or \$916.30; \$500.00 for harassment in trying to evict the tenants causing undue stress on the tenants; 15 hours @ \$25.00 per hour for the tenants' time researching the *Act* and Policy Guidelines and time having to communicate with the landlord; and \$200.00 for mental aggravation; for a total of \$2,131.00 or 2 months rent, which would amount to \$1,920.00, plus recovery of the filing fee.

I refer to Residential Tenancy Branch Policy Guideline #6 – Right to Quiet Enjoyment which states, in part: "... common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes." "Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment." Therefore, in order to be successful the tenants must establish that the interference was substantial, which can include unreasonable and ongoing noise.

I don't agree that the unreasonable and ongoing noise constitutes recovery of a substantial portion of rent payable to the landlord. The tenants had resided in the rental unit for approximately 7 weeks at the time of filing the application, and I can't overlook the undisputed testimony of the landlord that the tenant was threatening to sue for loss of quiet enjoyment prior to the beginning of the tenancy.

I have reviewed the evidentiary material of the parties, and I dismiss the tenants' application for \$500.00 for harassment for the landlord's attempt to evict the tenants. There is no basis for this portion of the application.

Further, there is no provision for the tenant's claim to educate themselves with information that is available to the entire public, and I am not satisfied that the tenants have established any claim for mental aggravation. The tenant emailed the landlord constantly since before the tenancy began, and I find that any mental aggravation was at least partially brought on by the tenants' continued fixation on the tenancy.

I am satisfied, however, that due to the placement of the outside door in relation to the tenants' rental unit, which is a different configuration than other units, and the tenant requested several times to have the issue resolved, without sufficient response from the landlord, the tenants have established a claim for loss of quiet enjoyment from June 28 to August 31, 2015. I also agree that quantum should be in relation to the amount of monthly rent payable, but I am not satisfied that more than half a month's rent is reasonable in the circumstances, and I hereby grant a monetary order in favour of the tenants as against the landlord in the amount of \$480.00.

Since the tenants have been partially successful with the application the tenants are also entitled to recovery of the \$50.00 filing fee.

I order that the tenants be permitted to reduce rent for a future month by \$530.00 or may otherwise recover that amount.

I find no basis for the tenants' application that the landlord should be ordered to comply with the *Act* regulation or tenancy agreement, and that portion of the application is dismissed.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$530.00. I further order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

The tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is 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: September 30, 2015

Residential Tenancy Branch

