



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Woodland Park Townhomes and Midwest Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, OLC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants 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 landlords comply with the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlords for the cost of the application.

Both tenants attended the hearing, gave affirmed testimony, and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the landlords. An agent for the landlord companies attended the hearing and also gave affirmed testimony and provided evidentiary material to the Residential Tenancy Branch and to the tenants. The parties were given the opportunity to question each other with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords 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 and estimated moving expenses?
- Have the tenants established a monetary claim as against the landlords for return of all or part of the pet damage deposit or security deposit?
- Have the tenants established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically with respect to the tenants' right to quiet enjoyment of the rental unit?

Background and Evidence

The first tenant (AS) testified that this tenancy began on April 1, 2011 and is now on a month-to-month basis. The tenants still reside in the rental unit and have provided a copy of the tenancy agreement. Rent in the amount of \$1,326.48 is currently payable on the 1st day of each

month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$500.00 as well as a pet damage deposit in the amount of \$500.00, both of which are still held in trust by the landlords.

The tenant further testified that the application for return of the security deposit and pet damage deposit were made to cover the tenants' bases and avoid further disputes, however the tenants are not planning to move out of the rental unit.

The tenant further testified that the tenants in one of the units within the rental complex is running a daycare out of the unit, and significant noise and disturbances are experienced by the tenants in the front and the back of the complex from children, and the next unit also has a child. The children also have guests who all make a lot of disturbing noise. The tenants have provided audio and video of the noises. The tenant testified that it's not just kids playing, it's screaming "bloody murder" and the tenant stresses the amount of disruption caused. The tenants were not made aware of a daycare in the complex at the commencement of the tenancy. The tenants advised the landlords' agent at the time that the tenant's husband worked varying shifts and slept during the day at that time, and wanted quiet space. The landlords' agent said that this rental unit would suit them best. The complex consists of row houses and doors are close to each other. The audio USB stick also contains photographs and a written log showing the dates of disturbances, some unsupervised by adults and some with adults screaming along with the children.

There have been several different managers in the rental complex and the tenants have complained to each of them, who all said they'd look into it but nothing ever happened. The tenant's spouse works from home now doing technical support and his work has been disturbed. During the course of the tenants' complaints, the landlords' agents told the tenants to take it to the City and the tenants contacted a by-law officer, who said that he didn't have jurisdiction because it was a multi-family dwelling but would write a letter to the landlords. The tenants then were referred to the property management company.

Notice to all residence was placed in each tenant's mailbox at the end of March or beginning of April, 2015, and the tenant overheard a tenant speaking to another agent of the landlord who advised that the notice was to cover the landlords' interests, and the tenants do not feel that the notice was received in any serious way because of the way it was handled by the landlords' agent. Other notices over the years were also placed in mailboxes and copies have been provided. The current agent of the landlord said she would look into it, and another agent told the tenant that she asked if the other rental unit was running a daycare and was told that the current agent approved it. The people and traffic are dropped off and picked up 9:00 a.m. to 5:00 p.m. or thereabouts, and they are not just family members of tenants. The lease says that running a business has to be approved in writing and cannot disturb other occupants. The tenants have raised it for a few years and still nothing is done. As a result, the tenants are accused of hating children, however the screaming is as significant as a child being abducted.

The tenants claim \$7,920.00 for loss of quiet enjoyment. The tenants have been disturbed on average 4 times per week over the course of 4 years. On average, the tenants lose approximately 5 hours of reasonable quiet enjoyment. Rent has been an average of \$1,250.00 per month over that 4 year period, having been raised from time to time, and divided by 30 days in a month is \$41.67 per day. Approximately 5 hours for those days amounts to \$10.25 and multiplied by an average of 16 days per month that the tenants are disturbed, amounts to \$165.00 per month, or \$7,920.00. The tenants claim an additional \$1,000.00 estimated for moving expenses.

The second tenant testified that the tenants are busy professional people, and when the tenancy began, the tenant was working out of the office and has only been working from home for the last 2 ½ years. The reputation of the tenant's company is crucial about how customers are treated. The tenants were promised by the previous landlords' agent quiet and no disturbances. The tenant has been forced now to go to work at an office, and pay for parking and gasoline.

The tenant agrees that noises happen and children reside in the complex, and some are very well behaved. Disturbances happen from time to time, but they are affecting the tenant's work. Further, a business is being run, being a daycare, which is not supposed to and when the tenants bring it to the top of the landlords' chain, they were accused of hating children, being petty, and reminded that the rental unit was advertised as family friendly. The current agent of the landlord emailed the tenants on July 7, 2015 mentioning that notices were sent to other tenants, but there are none in the landlords' evidence. The only issues are about parking, which is not the tenants' concern.

The landlords' agent testified that children are noisy playing outside, and other tenants complain when they are not able to allow their children to play outside. The landlords' agent tried to discuss that with the tenants.

A neighbouring tenant who has provided an email saying that she has a daycare business in her unit told the landlords' agent that she really doesn't. The landlords' agent called both rental units whom are the subject of the tenants' complaints and both say they are not running a daycare.

The landlords' agents don't know which kids are making the loud noises so it's difficult to caution other tenants. There are other buildings within the several complexes, with a total of 20 buildings within a couple blocks of the rental unit. Other residents are threatening to move out because of their rights to allow kids to play outside. One of them says she looks after her grandkids, and that person has also provided a letter to that effect as evidence for this hearing.

The landlords' agent also testified that the audio provided by the tenants was taken when kids are going to school. Videos of the tenants all show the tenants' windows open and have even complained about a loud truck.

The landlords' agent denies any responsibility for moving expenses since the tenants haven't given notice to end the tenancy.

Analysis

Firstly, with respect to the tenants' application for a monetary order for return of all or part of the pet damage deposit or security deposit, the *Residential tenancy Act* states that within 15 days of the date the tenancy ends or the date the landlord receives the tenants' forwarding address in writing, whichever is later, the landlords must return the deposits in full or make an application for dispute resolution claiming against them. I find it is premature to deal with the deposits since the tenants have not vacated the rental unit, and I dismiss that portion of the claim.

With respect to the balance of the tenants' claim, in order to be successful, the tenants must establish that the damage or loss of quiet enjoyment exists, that it exists as a result of the landlords' failure to comply with the *Act* or the tenancy agreement, and what efforts the tenants made to mitigate any loss suffered. I have reviewed the photographs, video and several hours of audio recordings provided by the tenants, as well as the evidentiary material provided by the parties. I had difficulty accessing the USB stick containing all of the technical evidence, but was eventually successful. I heard a lot of outside noises in the audio, including, but not limited to sounds of children playing, some squealing, singing, laughing, and some positive parental involvement with a hockey game. I was also able to identify the loud truck referred to by the parties however the driver never revved up the motor or made any unnecessary loud noises.

I have also reviewed the tenancy agreement and assuming all tenants in the complex have a similar tenancy agreement, there is nothing about owning or operating loud vehicles, and I question whether or not the tenants would insist that the driver get rid of his/her truck if that person was a tenant in the complex. I also heard annoying crows and a lot of other vehicular and airplane traffic, which in a lot of cases drowned out the sounds of children.

The tenants' claim is that the landlord have allowed a day-care in the complex, however I am unable to identify which of those noises from children are from a day-care or children of tenants. The landlord denies a daycare, however a neighbouring tenant has provided a letter stating that she does run a day care, however I have no evidence before me to satisfy me that one of the landlords' agents hasn't approved such a business. Another neighbouring tenant provided a letter indicating that she has resided in the complex for over 20 years, has raised her children there, and now looks after her grandchildren, and there is nothing wrong with that according to the *Act* or the tenancy agreement.

I also note that almost all of the noises are very obviously recorded with the windows of the tenants' rental unit open.

It's unfortunate that, according to the tenant's testimony, the complex has had several changes to the landlords' agents over the 4 years of this tenancy, and the agent who showed the unit at the commencement of the tenancy recommended this particular rental unit due to the environment required by the tenants. However, I am not able to determine, in the circumstances that the landlords have done anything contrary to the *Act* or the tenancy agreement or that the tenants have mitigated by closing the windows. The rental complex is a family complex and as such tenants must realize that noises in such a complex will exist.

Conclusion

For the reasons set out above, the tenants' application for a monetary order for return of all or part of the pet damage deposit or security deposit is hereby dismissed. The tenants may make a similar application after the tenancy has ended if the circumstances require it.

The balance of the tenants' application is hereby dismissed 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 03, 2015

Residential Tenancy Branch

