



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, OLC

Introduction

The Application for Dispute Resolution filed by the tenant seeks the following:

- a. An order for a monetary order in the sum of \$1700.
- b. An order that the landlord comply with the Act, regulations or tenancy agreement.
- c. An order to recover the cost of the filing fee.

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. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The tenants objected to the production of the landlord's documentary evidence. The landlord had sent it to the address of the rental unit (which was the address for service on the tenants' Application for Dispute Resolution) but the tenants failed to put in a change of address form with the post office and failed to change their address on the Application for Dispute Resolution). The landlord read her 4 page summary of events at the hearing.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on September 26, 2015. With respect to each of the applicant's claims I find as follows:

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 June 1, 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$1100 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$550 and a pet damage deposit of \$100 at the start of the tenancy. The landlord sold the rental property with the possession date of October 15, 2015. The tenants vacated the rental property on November 1, 2015. .

The tenants seek a monetary order for a breach of the covenant of quiet enjoyment based on the following evidence:

- On or about August 1, 2015 the landlord, living upstairs got a Great Dane puppy for her daughter. Since that time the tenant's enjoyment of the rental property has been greatly disturbed by the parking and jumping on the floors.
- The tenant stated that the noise has started as early as 4:30 a.m. and often continues for hours on end.
- The parties have exchanged a multitude of texts with the tenants complaining about the excessive noise.
- The tenants testified that when the landlady leaves she puts the puppy in a cage above their room and the dog begins barking for hours on end.
- The tenants testified they brought the excessive noise to the attention of the landlord and her response was the tenants can forget about being quiet from now on and that they should move or take legal action if it's a problem.
- The landlady has continued to terrorize them by stomping on the floors.
- The tenants refused to talk to the landlord in person because of the abuse they received from the landlord as a result of the encounters.
- The tenant produced digital recordings of 22 incidents of noise coming from the upstairs for the period from September 8, 2015 to September 25, 2015. The tenants produced a second digital stick with audio recordings and photos of text messages.
- The tenants produced a letter from the female tenant's mother about the excessive noise and the comments of the landlord. It states they cannot hold conversations or sleep through the night.

The landlord testified as follows:

- She disputes much of the tenants' evidence as to excessive noise.
- She testified the tenants told her that they liked dogs and left her with the impression that both tenants were working.

- The tenants breached her quiet enjoyment particularly with the loud motorbike.
- She provided the tenant with ant traps when she expressed there was a problem.
- The tenants cut branches from a tree without her permission.
- The tenants failed to deal with the beeping from the dryer after it had completed its cycle.
- The laundry schedule became a bone of contention
- The tenants had guests without getting the landlord's approval.
- The puppy was not left alone at home. Either the landlord or her adult daughter was there. She produced a letter from her daughter's father stating that when the daughter went to work he would drive her there and then keep the puppy.
- The tenants were abusive when dealing with her.
- The tenants were inconsistent. At one stage they refused to talk to the landlord in person saying they required all communications to be in the form of texts. At another time they were hammering on her door in the morning as she was preparing to go to work.
- The landlord objected to the conduct of the tenants on September 19, 2015.

Law

Policy Guideline #6 provides as follows:

"Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

It is necessary to **balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises**, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

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 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."

Analysis

After carefully considering the disputed evidence I determined the disturbances complained of by the tenant were of sufficient severity and duration to amount to a breach of the covenant of quiet enjoyment. The tenants produced sufficient evidence to establish their enjoyment was significantly disturbed during much of September by the excessive barking of the dogs. This disturbance was further exacerbated by the conduct of the landlord in stomping on the floors. I find the conduct of both parties in dealing with each was inappropriate. Much of the evidence presented by the landlord was not relevant to the tenants' claims. The tenants seek a monetary order in the sum of \$1700. I determined the amount claimed in excessive. The male tenant was working most workdays. The female tenant had a part time job. The tenants recorded disturbances but did not keep an accurate log as to how long the disturbances lasted. Further, after listening to the evidence I determined that some of the disturbances did not reach the severity as amounting to the breach of the covenant of quiet enjoyment. In the circumstances based on the evidence presented I determined the tenants are entitled to the sum of \$500 for the breach of the covenant of quiet enjoyment.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$500 plus the sum of \$50 in respect of the filing fee paid pursuant to section 49 for a total of \$550.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion

In summary ordered the landlord to pay to the tenants the sum of \$550.

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 30, 2015

Residential Tenancy Branch

