



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O, FF

Introduction

This was a hearing with respect to the tenants' application for a monetary award. The hearing was conducted by conference call. The named tenant and the landlord's representative called into the hearing and participated. The tenant and the landlord submitted documentary evidence. Each acknowledged receipt of the other party's documents.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began December 1, 2015 for a one year term with rent in the amount of \$1,350.00 payable on the first of each month.

The tenant testified that she rented the apartment with her boyfriend. When they viewed the apartment prior to renting it, they were told that there was an occasional ticking noise that could be heard in the rental unit that originated from the heating system. The tenant testified that the noise was far worse than described; soon after moving in the tenants began to hear a ticking noise in the walls. She said that initially the noise was quiet, but several weeks into the tenancy the noise increased in volume and frequency until it became so loud and intrusive that the tenants were unable to sleep through the night and began to resort to sleeping medications. The tenants reported the problem to the building manager.

The landlord arranged for its plumber to investigate the complaint. It took several days to conduct inspections of the rental unit and other apartments in the building above and below the rental unit. The tenant said that the plumber decided that the problem was

caused by a loose pipe behind the wall of the rental unit. He cut a hole in the wall and filled the wall cavity with foam insulation. The tenant said the work was ineffective. The tenant complained that the hole in the wall was left open for several weeks until she complained and the landlord then had it boarded up.

The tenant testified that the landlord's representative arranged for the tenants to move their bed to an empty apartment so they could get some sleep at night. The tenant said she was told the problem was fixed and they moved their bed back into the apartment, but, they found that the problem persisted so they resorted to sleeping on couches in the living room where the noise was less obtrusive.

The tenant said that near the end of December the landlord's representative suggested that they move to a seventh floor apartment that would be available February 1st. The tenant said the rent for the suggested apartment was more expensive and they could not afford it. The tenants offered to take the seventh floor apartment if the rent was reduced. The tenant said she had not received a replay by January 26th and therefore began to look for a new apartment. The tenant testified that she found another apartment and had to move without assistance because her boyfriend was out of town.

The tenants moved out of the rental unit on January 31, 2016. The tenant received a refund of her security deposit. The tenants have claimed payment of the full amount of rent paid for December and January because of the problems with the rental unit and what she said was the terrible way the landlord dealt with the matter.

The landlord's representative testified that the tenants were told before the tenancy began that this was an older apartment building and there were noises in the building due to the hot water heating system. The landlord's representative said that the landlord responded to the tenants' complaints. The landlord hired a plumber to investigate and it provided the tenant with another apartment to sleep in. The landlord's representative believed that the problem was fixed, but when the tenants continued to complain the landlord offered to have them moved to another unit on the seventh floor. The unit was larger and rented for a higher amount. The landlord's representative said that the unit was offered to the tenants for \$1450.00 per month, which was below the market rent, but the tenants declined the offer and moved out on January 23rd, 2016. The landlord released the tenants from their fixed term tenancy and refunded their security deposit.

Analysis

The tenants have claimed a refund of the entire rent paid for their two month tenancy, apparently based upon their loss of enjoyment of the rental unit and upon their contention that the landlord treated them badly when dealing with the problem. The

tenants' claim amounts to an assertion that the tenancy was entirely without value during the two month term. I do not agree that the loss of quiet enjoyment was so great as to nullify any benefit the tenants received from the tenancy.

Although I agree that the tenants may have suffered a loss of quiet enjoyment due to a noise issue and due to the work done by the landlord to investigate and attempt to remediate the problem, I do not agree that the landlord acted improperly. The landlord took the tenants' complaints seriously; it investigated the complaint and took steps to perform repairs. The landlord also offered the tenants another apartment to sleep in and it offered to relocate the tenants to another more expensive apartment, but at a slightly reduced rent. I find that the landlord acted appropriately throughout and the landlord's conduct should not play a role in assessing compensation.

I find that the tenants did suffer a compensable loss of quiet enjoyment and inconvenience due to the noise problem in the rental unit and the work done to rectify the problem. They had to relocate to another unit to sleep and had to move their bed and bedding. The tenant's also had to put up with the repairs in the rental unit and the open hole left in the bedroom wall for several weeks. I find that the loss of quiet enjoyment justifies a nominal award in the amount of \$200.00. The tenants are entitled to recover the \$100.00 filing fee, for a total award of \$300.00 and I grant the tenants an award under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The tenants' claim has been allowed in the amount stated.

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: October 3, 2016

Residential Tenancy Branch