



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This was the hearing of an application by the tenants for a monetary order and an order that the landlord comply with the Act, Regulation, or tenancy agreement. The hearing was conducted by conference call. The tenants and the named landlord called in and participated in the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?
Should the landlord be order to comply with the Act, Regulation or tenancy agreement?

Background and Evidence

The rental unit is a duplex rental unit in Maple Ridge. The landlords own the rental property. The tenancy began on January 1, 2004. The initial monthly rent was \$750.00 and the tenants paid a security deposit of \$375.00 at the start of the tenancy. The current monthly rent is \$775.00. The landlords have rented the adjoining duplex unit to other tenants over the course of their tenancy. They testified that the other duplex rental unit was rented to the current occupants in late 2009.

The tenants testified that for the past six years they have suffered a loss of quiet enjoyment due to the barking dogs kept by the neighbours in the adjacent duplex unit. The tenants said that the occupants of the adjacent have kept and bred dogs in their unit for the past six years. The neighbours have two or three Schnauzer dogs. The tenants claimed that in the past the neighbours have bred the dogs. The tenants testified that they have lost the privacy and sanctuary of their home for the past six years; they have not slept properly for six years. The noise of the barking dogs has affected their employment and prevented them from entertaining in their home. The tenant testified that they are unable to sleep in their bedroom because of the noise of the dogs, slamming doors and loud music from the neighbouring tenants. The tenants submitted statements from acquaintances who have visited the tenants at the rental unit and they attested to the disturbance and noise caused by the neighbours' dogs.

The tenants submitted a CD containing a recording of the sounds of the dogs barking at different times. They recorded an oral submission in a second CD.

The tenants have not made any previous applications to the Residential Tenancy Branch. They have pursued other avenues to end the barking dog problem. The tenants have brought bylaw complaints to the municipal government. They provided copies of a complaint made in 2010 together with a log setting out dates, times and duration of barking. The tenants submitted logs and complaints about occurrences in 2010 and 2011. They made further complaints to the municipal government in 2013. The matter proceeded to a provincial court hearing that resulted in the ruling of a provincial court judge dated March 18, 2014. The tenant's neighbours were charged with the bylaw infraction of having allowed dogs in his control or possession by barking or noises to: "disturb the quiet, peace, rest, enjoyment, comfort or convenience in the neighbourhood of persons in the vicinity". The judge dismissed the complaint; he did not accept the complainant's evidence that there was an incessant disruption of peace, but he urged the neighbours to have some consideration for the tenants' feelings on the issue.

The tenants submitted logs of dog activity from 2010 onwards and records used in bylaw enforcement proceedings in 2013. The tenants also submitted logs they compiled for period in 2015 and 2016. The rental unit is near a cemetery and according to the tenant's logs people visiting the cemetery or activity in the cemetery such as a funeral causes the dogs to bark. The tenants referred in the logs to occasions when sirens cause the dogs to bark; although not discussed at the hearing the tenant's log notes state that from time to time the tenants sound an air-horn when the dogs bark

The tenants complained about an incident that occurred in 2013 when the tenants claimed to have been verbally assaulted by the neighbour who yelled and swore at them. The tenants testified that the neighbours damaged their car in 2013 when they were using a power washer on the roof of the rental unit and sprayed dirt and debris all over the tenants' car parked in the car port.

In application for dispute resolution the tenants claimed a monetary award in the amount of \$5,685.00. The claim was said to be for loss of use and enjoyment for each year of the tenancy from May, 2010 onwards, calculated as a percentage of monthly rent. The tenants claim \$600.00 compensation for 2010 and \$930.00 for each year thereafter until 2016. They claimed \$465.00 for the period from January to June, 2016.

The tenants submitted copies of several letters sent to the landlord in 2016 demanding that the landlords deal with the ongoing disturbance cause by the neighbours' barking

dogs and what they claimed was the unnecessary slamming of doors in the late hours of the night.

The landlord testified that the rental property is pet friendly and the tenants had four cats when they moved into the rental unit. The landlord testified that they have responded to the tenant's noise complaints. She said she has visited the property numerous times to check on the dogs and noise complaints. She said that she and her husband have made unannounced visits to the property as well and regular visits to collect rent and they have not heard the dogs bark for more than a few seconds during those visits. She said this accords with the findings of the judge in the bylaw enforcement proceeding. The landlords have stepped in to address complaints by the tenants. The incidents involving the neighbours swearing at the tenants took place a number of years ago and have been dealt with. The landlord had the neighbours install weather stripping on the doors of their unit in response to the tenants' complaints of slamming doors. The neighbours have stopped breeding any dogs at the rental property more than two years ago and they do not perform any mechanical work on the property. The landlord said she has attempted meet and mediate with the tenants and the neighbours without results.

The landlord referred to actions by the tenants that have inflamed matters. The tenants were directed by the RCMP to remove a notice placed in the cemetery soliciting passersby to assist the tenants to stop the owners of the "3 BARKING DOGS." The landlord submitted a copy letter from two nearby residents who said that they have never had any issues with the neighbours' dogs and have not been bothered by them.

The landlord said that the tenants are unwilling to accept any remedy save for the eviction of their neighbours. The landlords' position is that there are not proper grounds to evict the tenants' neighbours and the landlord does not agree that the tenants are entitled to compensation for loss of quiet enjoyment.

Analysis

The tenants have brought this application seeking redress for what they claim to be breaches of their rights to quiet enjoyment dating back for more than six years. The tenants elected to seek a remedy for their problems by pursuing complaints to the municipality to enforce perceived bylaw infractions. When that avenue proved fruitless they waited for two more years before bringing an application to the Residential Tenancy Branch. On the evidence provided both by the tenants and by the landlord, the problems that the tenants have had with respect to the neighbours and their dogs has lessened over time. There is no longer any dog breeding and the neighbours have stopped other activities that the tenants found disturbing.

The Residential Tenancy Policy Guideline with respect to entitlement to quiet enjoyment provides in part as follows:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

There is no doubt, based on their testimony, that the tenants find the barking of the neighbours dogs to be disturbing and irritating, but the standard that I must apply in assessing whether or matters complained of constitute a violation of the tenants' right to quiet enjoyment is an objective one; that is would the disturbance caused by the neighbours' dogs amount to a substantial or unreasonable interference with the ordinary and lawful enjoyment of the premises to the average tenant?

The neighbours' dogs are not expected to be silent; some noise from the dogs must be accepted and tolerated. The landlord's testimony is that she and her husband have investigated the complaints and they did not find that the neighbours' dogs were creating a substantial interference with the tenant's rights to quiet enjoyment. The landlord submitted letters from close neighbours who said the dogs were not bothering them to any significant degree. The landlord submitted that the logs do not show that the dogs bark incessantly as alleged by the tenants. The landlords have taken steps to address the tenants' complaints. They have caused the neighbours to restrict their activities. There is no longer any dog breeding at the rental property and foam weather stripping was placed to reduce the chance of noise from slamming doors.

I find that the tenants have not established that they are presently experiencing a substantial interference to their rights to quiet enjoyment due to the barking of the neighbours' dogs. With respect to the their claim for a monetary award for compensation dating back to 2010, I find that the tenants may not pursue what are now historical claims that they chose not to pursue until they exhausted other avenues. Their complaints may not be "saved up" for years and then pursued after other remedies have failed.

I find that the tenants have not established that the landlords have failed to comply with the Act, Regulation or tenancy agreement.

I find that the tenants have not established that they are entitled to a monetary award as compensation for loss of quiet enjoyment because their claim for past years is stale and because I have found on the evidence presented that the tenants have not established that the tenants are now suffering a substantial interference with their rights to quiet enjoyment. Based on the evidence presented, including the landlord's evidence, I have found that the dogs bark intermittently for periods of short duration and may respond to triggering events. I accept the landlord's evidence that they have investigated and have determined that the dog barking is occasional, within tolerable levels and would not justify issuing a Notice to End Tenancy for cause to the occupants of the adjacent duplex.

Conclusion

The tenants' application for compensation and for an order that the landlord's comply with the Act, Regulation or tenancy agreement is 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: December 16, 2016

Residential Tenancy Branch