



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing was convened in response to an application and amended application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the Landlord to comply - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to compensation for breach of their rights to quiet enjoyment?

Are the Tenant’s entitled to compensation for the end of the tenancy?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy of an upper unit in a house started under written agreement on June 1, 2016 for a fixed term to end May 31, 2017. The Landlords resided in a lower unit of the house. There were no discussions before or at the time of signing the tenancy agreement about the possible sale of the house. Rent of \$1,200.00 was payable on the first day of each month. The Tenants were required under the agreement to pay for ½ of all the utilities including the cable. The Landlord collected \$180.00 each month to be set off against the utilities. The tenancy ended on

October 31, 2016. The Landlord reconciled the utilities to the end of the tenancy and owes the Tenants a refund of **\$33.00**.

The Tenants states that no cheque for the reconciled utility repayment has been received from the Landlord. The Landlord states that a cheque was included in an evidence package that was sent to the Tenants by registered mail but that the cheque has not been cashed.

The Tenant states that the Landlords breached their right to quiet enjoyment of the unit by loudly arguing, yelling, screaming and having "temper tantrums" from 10 to 20 days each month of the tenancy. The Tenant states that the disturbance was primarily during the day time hours. The Tenant states that they never informed the Landlords of being disturbed by their behavior as they were afraid to confront the Landlords due to their displays of anger. The Tenants state that they reported the disturbance to the police on October 3, 2016 but that the police did not attend the unit and only told them to call if the disturbance continued over the night. The Tenants state that no anger was ever directed at the Tenants from the Landlords. The Tenants state that asked the Residential Tenancy Branch to intervene and were told that the police could be called about the matter. The Tenants state that they wanted to avoid a confrontation with the Landlords and did not communicate with them.

The Landlord states that they were under some stress during the tenancy and that while they did have arguments between themselves this occurred maybe twice throughout all of the tenancy. The Landlord states that they were away from the unit for 10 to 20 days each month as they spent their time on a boat. The Landlord states that the Tenants never informed the Landlords of any disturbance and only found out in the Tenant's evidence materials for this application that the matter was reported to the police. The Landlord states that he then contacted a good friend who was a member of the police and was told that nothing would come of the report. The Tenants state that they contacted the police and were told that the police officer referred to by the Landlord was retired and had no access to police records.

The Tenants state that that the Landlord asked to Tenants for entry to obtain a market evaluation of the house informing them that the house would be sold in March 2017. The Tenants states that after the evaluation they were told that the house would be listed in 2 days. The Tenants state that they understood that despite the sale they could remain in the unit until the end of the fixed term but were then harassed by the Landlord's real estate agent to move to the lower unit or end the fixed term agreement. The Tenants state that the agent called them 9 times between September 27 and October 5, 2016, yelled over the phone, was demanding and would not listen to the Tenants.

The Tenants state that they had enough of the pressure from the agent and before they ended the tenancy they spoke with the Landlord about the agent's behavior. The Tenants state that the Landlord agreed that the agent would be spoken with and would not return to the unit. The Tenant states that despite the Landlord's agreement they decided to move because they were uncomfortable with the behavior of the Landlord, the lack of any warning given to the Tenants about the sale of the house and the lack of choice of landlord as a result of the sale. The Tenants state that they were also concerned with the Landlord's storage of gas in the lower unit but that they did not inform the Landlord of these concerns prior to making this application because of the Landlord being unapproachable. The Tenants state that by mid October 2016 they had found a place to move to for November 1, 2016. The Tenant claims moving costs because they were not prepared to move along with compensation equivalent to two months' rent.

The Landlord submits that on October 3, 2016 the Tenants sent an email informing the Landlord that the tenancy would end on October 31, 2016. A copy of that email was provided by the Landlord. The email notes in part as follows "Your realtor called us a couple of days ago and asked if we would go month to month. I found this very upsetting. So we went out and searched to find accommodations and I did." and "I have had to go to the medical clinic due to the stress of all this" and "I am sure you will be

happy to see us gone. It will be a win win for everyone involved". The Landlord states that on October 7, 2016 the Parties signed a mutual agreement to end the tenancy

The Landlord states that the Tenants said nothing to them about the real estate agents behavior until they received the Tenants' submissions for this hearing. The Landlord states that he contacted the real estate agent who said that the Tenants were only informed of their rights to stay to the end of the tenancy and that the Tenants were cautioned about entering into a tenancy agreement with another landlord while in a fixed term lease with the current Landlord. The Landlord states that the agent offered the lower unit to the Tenants at a greatly reduced rate and offered to change the tenancy agreement to a month to month agreement. The Landlord argues that the agent was only offering information and choices to the Tenants and that this was not harassment. The Landlord states that there was nothing wrong with the storage of the gas in a jerry can located in a shop below the parking area.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results.

Given the Landlord's acknowledgement of a couple of arguments and accepting that at least on one occasion the arguments were loud enough to warrant a report to the police, I find that the Tenants did face some disturbance from the Landlords' behavior during the tenancy but not to the extent claimed. I also accept that it would be difficult for any tenant to confront an angry landlord who lives below that tenant. For these reasons I find that the Tenants are entitled to compensation for breach of their peaceful enjoyment by the Landlords.

Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. Noting that the Landlord did not provide any direct evidence from the agent I can only consider the Landlord's evidence of the acts or behavior of the agent to be indirect evidence. Given the Tenants' direct evidence I therefore prefer the Tenants' evidence and find that the agent did call the Tenants to pressure the Tenants into making a change in the tenancy. Given this content of the calls I do not find the calls to be vexatious however given the daily calls I find this to be evidence of disturbance and find that the Tenants are also entitled to compensation for a breach of their peaceful enjoyment of the unit by the agent.

I do not consider the disturbances by the Landlords and their real agent to be so significant that the Tenants had no choice but to end a fixed term tenancy. I find instead that the Tenants mitigated their losses by entering into a mutual agreement to end the tenancy for a “win win”. I therefore dismiss the Tenants' claims for moving expenses. As the Tenants otherwise had full enjoyment and use of their rental unit for the term of the tenancy I find that the Tenant's claim for the equivalent of two month's rent to be excessive in relation to the loss of quiet enjoyment suffered and find that the Tenants have only substantiated an entitlement of **\$440.00**. I base this amount on a \$40.00 per diem portion of the rent ($\$1,200.00/30 = \40.00) for a period of 11 days, of which 9 represent the days the agent disturbed the Tenants and for no more than 2 occasions that the Tenants were disturbed by the Landlord's behavior. As the Tenants did not say anything to the Landlord's about the storage of gas and as there is no evidence that any harm occurred as a result of this storage I find that the Tenants have not substantiated any compensation for this act of the Landlord.

As the Tenant's application had merit I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$573.00**. As the cheque for the \$33.00 that is part of this entitlement amount has not been cashed I decline to deduct this amount from the entitlement.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$573.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: April 21, 2017

Residential Tenancy Branch