



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, PSF, O, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants, male and female, attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. "Witness AL" testified on behalf of the tenants and both parties had equal opportunities to question the witness. This hearing lasted approximately 62 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's written evidence package

The tenants claimed that the only evidence that they did not receive from the landlord was the landlord's doctor's note as well as the landlord's "appeal" description of the "previous decision" from the "previous hearing" that the parties attended before me on March 20, 2017. Both parties agreed that they attended a hearing before me on March 20, 2017, after which a decision of the same date was issued by me. The parties agreed that they reached a settlement at that hearing and the terms were recorded in my decision. The landlord said that her witness ASK served the above documents personally to the tenants with the rest of the written evidence package and she provided a written witness statement to this effect. I notified both parties that the above written evidence was irrelevant to the tenants' application, as the landlord did not file an application at the Residential Tenancy Branch ("RTB"), nor did she file a review application of my previous decision. Therefore, I advised both parties that I did not need to consider these two items from the landlord's written evidence package, as they were irrelevant to this hearing, but I would consider the remainder of the landlord's written evidence package that the tenants received. I do not find it necessary to make any findings regarding service of the above evidence because it is irrelevant.

The tenants confirmed that they applied for "other" unspecified remedies in error. Accordingly, this portion of the tenants' application is dismissed.

Issues to be Decided

Are the tenants entitled to a monetary award for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled an order requiring the landlord to provide services or facilities required by law?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and witness AL, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. The landlord purchased the rental unit on September 6, 2016 and the tenants were already living at the rental unit under a tenancy with the former landlord beginning in September 2013. Monthly rent in the amount of \$575.00 is payable on the first day of each month. A security deposit of \$270.00 was paid by the tenants and the landlord received this deposit from the former landlord and continues to retain it. The parties did not sign a written tenancy agreement, as only a verbal agreement was reached. The rental unit is a basement suite in the same house where the landlord lives on the main floor.

The tenants seek a monetary order of \$5,000.00 plus the \$100.00 filing fee from the landlord.

The tenants claimed that they suffered a loss of quiet enjoyment, due to the landlord's behavior at the rental unit. They stated that on March 21, 2017, the day after the previous hearing on March 20, the landlord began playing loud music with a radio directly outside their basement suite door. The tenants said that they had guests, which included witness AL and his wife, over for dinner and the music was a disturbance along with the landlord intermittently shutting off the water and electricity at the rental unit. Witness AL confirmed this, stating that while he did not see the landlord, he was told by the tenants that it was her. He stated that when he and his wife went to the bathroom at the rental unit and turned on the fan, the electricity would shut off each time. He claimed that he heard a woman, who he believes was the landlord, shouting through the door and yelling obscenities at the tenants and witness AL's wife.

The female tenant and witness AL confirmed that the female tenant had to go to a neighbor's house to get water in order to cook dinner that evening because the landlord shut the water off. The landlord denied these allegations, stating that she was not at home between 4:00 and 7:00 p.m. and that the tenants were able to cook a meal for their guests so they had access to water at the unit. The landlord provided a printout of hydro consumption data from March 20 to 23, 2017, stating that there was continuous hydro service except for a system-wide "whole panel shut off for some reason" at 1:00 a.m. on March 20, 2017.

The female tenant and witness AL testified that the tenants called the police twice at 5:30 and 7:45 p.m. on March 21, 2017, in order to report the loud music and the water and electricity shut offs and the police attended and took statements from them and their two guests. Witness AL confirmed that the first time the police attended, he overheard them talking to a woman, who he assumed was the landlord, through an adjoining door at the rental unit, where the police repeated information to the landlord, told her not to disrupt the tenants or play loud music, and asked whether she wanted to

go to jail. He said that the landlord's two sons told him and the tenants that their mother was playing loud music through a radio at the door of the rental unit. He said that the second time the police attended that night, he heard the same woman trying to run upstairs and being restrained by the police. The landlord denied these allegations, stating that she was not restrained by the police at all. The landlord claimed that the police were her witnesses that nothing occurred at the rental unit, and that she did not play loud music or do anything wrong.

The tenants and witness AL testified that the same events occurred on March 23, 2017, when the landlord played loud music on a radio outside their adjoining basement suite door and shut the electricity off intermittently. The tenants provided written statements from "witness GB" and "witness JB" regarding these events. The statements indicate that both witnesses went over to the tenants' rental unit from 7:30 p.m. to 9:30 p.m. on March 23, 2017. Witness AL claimed that he and his wife also went over to the tenants' rental unit on March 23, and that both witness GB and witness JB were there as well. Witness GB and witness JB both confirmed in their statements that the tenants called the police, the police obtained statements from the female tenant and then went to speak to the landlord about the loud music. The landlord denied the above allegations, stating that there was a wedding in the neighbourhood where the loud music was coming from and that she informed the police about this, so they agreed that the noise was coming from the wedding party and not the landlord.

The female tenant also claims for \$1,458.57 in tuition fees, stating that she did badly in a school exam on March 22, 2017, because of the landlord's disruptive behaviour on March 21, 2017. She said that while she passed the exam, which was 45% of the grade for that course, her overall grade point average dropped significantly enough that her Assistant Dean advisor informed her that she would not qualify for a Master's Program in the fall of 2017. The male tenant said that the female tenant would have to wait another year in order to apply to the same Master's program. The female tenant said that her school studies have suffered because of the landlord's loud music the night before her exam, the fact that she has had to leave the rental unit and stay with relatives in order to avoid the landlord and noise, and she has had to discuss these issues with other people in order to obtain assistance, despite trying to avoid personal contact with the landlord. The landlord claimed that the tenant should not have been having a dinner party on March 21, 2017, the night before her exam on March 22, 2017. She stated that the police told her that the tenants were enjoying their dinner party with their friends on March 21, 2017. The landlord maintained that the tenants are trying to make "easy money" and she did not commit any of the actions that the tenants allege.

Analysis

Loss of Quiet Enjoyment

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the tenants must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 28 of the *Act* states that the tenants are entitled to quiet enjoyment, including reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject only to the landlord's right to enter in accordance with section 29 of the *Act*.

On a balance of probabilities, I accept the tenants' and witness AL's testimony and witness GB's and witness JB's written statements that the landlord played loud music directly outside the rental unit and caused numerous calls and conversations with the police regarding the above events. Although the two witness statements are unsigned and undated, I give them limited weight in that they support the tenants' and witness AL's testimony at this hearing.

On a balance of probabilities, I find that the tenants and their guests were disturbed by the landlord's behaviour, particularly on March 21 and 23, 2017. The landlord failed to provide witness testimony, written statements or police evidence to support her version of events, despite the fact that she said the police fully supported her and were her witnesses to the various incidents.

On a balance of probabilities, I find that the landlord breached section 28 of the *Act* by violating the tenants' right to freedom from unreasonable disturbance. I order the landlord to provide the tenants with quiet enjoyment at the rental unit for the remainder of their tenancy. If the landlord fails to do so from the date of this hearing on May 5, 2017 onwards, the tenants have leave to reapply at the RTB for dispute resolution. Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

I accept the tenants' evidence that they suffered a loss of quiet enjoyment, due to the landlord's actions. As per RTB Policy Guideline 16, where no significant loss has been proven but there has been an infraction of legal rights, an Arbitrator may award nominal damages. Based on this principle, I award the tenants nominal damages of \$200.00 for a loss of quiet enjoyment at the rental unit.

I dismiss the remainder of the tenants' monetary claim for \$5,000.00. I find that the female tenant failed to show that her school grades dropped at all. She did not provide transcripts of her school courses or grades, nor did she provide written confirmation that she would not be accepted into a Master's program at university, which she has not even applied for by her own testimony. I find that the tenants provided insufficient evidence that the landlord's actions affected the female tenant's studying because her and witness AL's testimony during the hearing described how they were unable to enjoy their dinner plans on March 21, 2017, not about how her school exam was directly affected on March 22, 2017.

Orders

As per the previous decision, which was a settlement agreement, the landlord agreed that the tenants are entitled to receive continuous access to heat and electricity at the rental unit included in their monthly rent and not to disconnect these services for the remainder of this tenancy. The landlord agreed to the same conditions at this current hearing. Therefore, I order the landlord to abide by this agreement. If the landlord fails to do so from the date of this hearing on May 5, 2017 onwards, the tenants have leave to reapply at the RTB for dispute resolution.

I also order the landlord to provide the tenants with continuous access to water at the rental unit, as part of their rent, as the landlord agreed to this during the hearing. If the landlord fails to do so from the date of this hearing on May 5, 2017 onwards, the tenants have leave to reapply at the RTB for dispute resolution.

The tenants said that the landlord disconnected their internet service as of March 21, 2017, and they wanted it reconnected. I find that the tenants failed to show that internet service is included in their monthly rent, as the landlord disputed this and the tenants failed to provide documents to confirm it. Therefore, I make no orders regarding this item.

As the tenants were partially successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I order the tenants to deduct \$300.00 from their June 2017 monthly rent payable to the landlord for this rental unit and this tenancy, in full satisfaction of the monetary award made at this hearing.

I order the landlord to provide the tenants with quiet enjoyment at the rental unit for the remainder of their tenancy. I order the landlord to provide the tenants with access to continuous heat, electricity and water at the rental unit included in their monthly rent and not to disconnect these services for the remainder of this tenancy. If the landlord fails to abide by the above orders, from the date of this hearing on May 5, 2017 onwards, the tenants have leave to reapply at the RTB for dispute resolution.

The remainder of the tenants' application is 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: May 08, 2017

Residential Tenancy Branch