



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, O, OLC, MND, FF

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$19,370
- b. An order that the landlord that the landlord comply with the Act, regulation and/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.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on April 13, 2017. 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 tenants are entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenants are entitled to an order that the landlord comply with the Act, regulation and/or tenancy agreement.
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The written tenancy agreement provided that the tenancy would start on February 29, 2016. The present rent is \$1410 per month plus \$20 for parking per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$680 at the start of the tenancy.

The tenants seeks compensation in the sum of \$19,370 being reimbursement of the rent for since they moved into the rental unit alleging the landlord has breached the covenant of quiet enjoyment.

The tenants testified as follows:

- The Building Managers lived immediately below their unit. They are constantly harassing them about noise complaints where there is no excessive noise and where the noise amounts to normal user.
- The tenants referred to a letter they wrote to the landlord dated January 16, 2017 where the tenants referred to approximately 25 incidents starting February 26, 2016 to January 15, 2017 where the Building Managers have complained in a situation where it was not warranted. Those complaints included:
 - 5 complaints for walking
 - 4 complaints for kitchen noises
 - 3 complaints for bedroom noises
 - 1 incident relating to a robotic vacuum
 - A few incidents where there was guests over for diner
 - Most of the complaints took place between 8:00 a.m. and 8:00 p.m. which the tenants and amount to normal use of the rental unit.
- The tenants have attempted to work out a solution with the landlord but the landlord refuses to engage in a discussion.
- The tenants rely on a letter dated May 11, 2017 which includes four complaints about kitchen noises, 2 complaints about bedroom noises and one complaint about walking.
- On one occasion the Building Manager made a complaint about excessive noise. The Relief Manager stood outside out door for 20 minutes without our knowledge and confirmed there was no excessive noise.
- They are frustrated and find it extremely stressful about the constant harassment and the landlord's refusal to meet to resolve this matter.

The landlords gave the following evidence:

- SZ testified she was a tenant in the rental property and there was excessive noise relating to the moving of furniture. This occurred about 6:00 p.m. and lasted about an hour. Her husband went upstairs to complain. She was sure precisely what unit the noise came from.
 - She moved out of the rental property in April 2017.
 - There was a second incident of excessive noise.
- The landlord testified the noise is loud and disruptive to the building manager below including loud noises from walking, loud music, chopping and nocturnal activities.
- There were no complaints when the previous tenants were living in the rental unit.
- The complaint dealing with the vacuum robot was caused because the robot got stuck.
- PG provided a letter setting out her testimony complaints including disturbing noise from the kitchen and bedroom, a large number of people over with loud music. When she texts the tenants she seldom receives a reply. She is 2 month pregnant with a 22 month baby. She has a hard time napping because of the excessive noise. They did not have a problem with the previous tenants.
- LG provided a letter complaining about the disturbing noises coming from the upstairs rental unit including tapping and banging from the kitchen and bedroom noises.
- SKK (mother to PG) provided a letter stating she suffered a stroke in September 2016 and finds it difficult to relax with the noises coming from the rental unit above.
- The landlord produced a audio files of the excessive noises.

Law

Section 28 of the Residential Tenancy Act provides as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline #6 includes the following

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

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.

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Policy Guideline #16 includes the following:

16. Compensation for Damage or Loss

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

...

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

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D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive

element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

Analysis

This is a difficult case for the following reasons:

- One must expect a certain amount of noise in an apartment situation. It is difficult to determine whether the noise is excessive as people have different levels of sensitivity to noise.
- After hearing the disputed evidence of the parties I determined that many of the complaints made by the Building Manager are unreasonable.. Many of the complaints involve the normal use of the apartment including walking and kitchen noises.. Most of the complaints occurred during the daytime hours and are not after hours. Further, the landlords have failed to make reasonable efforts to resolve this problem.
- However, this is a claim by the tenants for reimbursement of all of the rent they have paid. I determined there is no basis for such a claim. While the landlords may have been a unreasonable with their complaints it does not give the right to reimbursement of all of the rent as the tenants received significant value for the rental unit. Further, there was extended periods of time when no complaints were received.
- Policy Guideline #16 provides there were a party is seeking compensation they must prove the value of the damage or loss. The tenants failed to provide sufficient evidence with respect to the value or quantum of their loss. They testified they felt stress and frustration but failed to provide sufficient evidence as to how it affected their lives. They did not provide medical evidence relating to stress.
- I have also considered the position of the Building Manager. There is insufficient evidence to conclude their conduct was prompted by malice or ill will towards the tenants. I determined they genuinely felt the noise was excessive. Further, the manner in which they handled the complaints through the use of text messages was respectful and did not create undo embarrassment.

In the circumstances I determined the tenants are entitled to nominal damages in the sum of \$100.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$100 plus the sum of \$100 in respect of the filing fee for a total of \$200 such sum may be deducted from future rent.

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.

This decision is final and binding on the parties.

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: June 6, 2017

Residential Tenancy Branch