



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RR

Introduction

On May 18, 2017, the Tenants applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), regulation, or tenancy agreement.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and was confirmed received by each party. The Landlord did not submit any documentary evidence in response to the Tenant’s application. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

During the hearing the Landlord’s agent Ms. M.K. testified that the parties participated in a previous hearing on April 6, 2017. A hearing was held on April 6, 2017, to hear an application from the Tenants to dispute a 1 Month Notice To End Tenancy For Cause and for compensation for loss of quiet enjoyment. The Landlord issued the Tenants a 1 Month Notice To End Tenancy For Cause due to allegations of late payment of rent and abuse of another Tenant on the rental property.

At the hearing on April 6, 2017, the parties agreed to settle the matter on the following conditions:

1. *The landlord withdraws the 1 Month Notice.*
2. *The tenants withdraw their application dated March 6, 2017 to dispute the landlord's 1 Month Notice.*
3. *The tenancy will continue until 1:00 pm on **June 30, 2017** on the condition that the tenants pay their rent in full on the first of each month, which they may do through the advocate attending at the hearing.*
4. *The landlord will promptly arrange for professional installation of a washing machine in the tenants' rental unit, and will have the installation company contact the tenants directly to schedule the installation.*
5. *The landlord will promptly attend the rental property with the advocate and measure the lot and mark its half-way point. The tenants will use only the front half of the lot, and will give the downstairs tenant the use of the back half of the lot. This means that the tenants will use the front door to enter and exit their rental unit, and will not use the back door to walk their dogs or for any other reason unless there is an emergency.*
6. *The landlord will allow the tenants to continue to use the lot adjacent to the rental unit lot for their dog run until she sells or otherwise gives up control of the adjacent lot.*
7. *All of the parties will treat one another with respect and courtesy.*

I find that the Tenants agreed to withdraw their application to dispute the notice, and for compensation, in consideration of the Landlord withdrawing the 1 Month Notice and other concessions.

I find that the settlement agreement is relevant to the Tenants' application before me where they are again seeking compensation for a loss of quiet enjoyment the four month period between February 15, 2017 and June 15, 2017.

I find the Tenant's claim for loss of quiet enjoyment is limited to the time period between April 7, 2017, and date of this hearing.

Issue to be Decided

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The parties testified that the tenancy started on February 1, 2016, as a month to month tenancy. The Tenants pay rent in the amount of \$850.00 by the first day of each month. The parties agreed that Tenants paid the Landlord a security deposit of \$425.00.

The Tenants are seeking compensation in the amount of \$1,600.00 for a loss of use of the rental unit and loss of quiet enjoyment. The Tenants submitted that they are seeking the amount of \$400.00 per month for the four month period of February 15, 2017 until June 15, 2017.

The Tenants testified that they are moving out on June 30, 2017, the date of this hearing.

The Tenants provided testimony about incidents that occurred when another occupant moved into the rental unit below them in December 2016. The incidents were related to the Tenants' dogs, a washing machine and incident that occurred on February 21, 2017, where the Tenants allege that the Landlord and occupant were rude to them. The Tenants testified that there was noise from slamming of doors and hammering.

The Tenants testified that they reported their concerns to the Landlord in a letter dated February 24, 2017. The Tenants provided a copy of the letter.

The Tenants submitted that they sent the Landlord another letter on March 29, 2017, where they expressed their concern regarding a lack peaceful enjoyment of the property since the new occupant moved in. The Tenants provided a copy of the letter.

The Tenants submitted that following the dispute resolution hearing on April 6, 2017, the disruptions have continued. The Tenants submitted documents indicating the occupant caused noise daily starting on April 22, 2017, into the middle of June 2017.

The Tenants submitted that they delivered another letter to the Landlord's property manager. The Tenant submitted that the letter is comprised of three letters written on June 5, June 14, and June 16. The Letters state there has been ongoing conflict since February 2017, and detail disruptions the Tenants have experienced with the other occupant and the Landlord. The letters document incidents where the Tenants were disturbed by noise caused from the occupant hammering and slamming doors, and walking through the Tenants property in June 2017. The Tenants submits that the banging is intentional because the occupant stated "*you like that?, I bet you are awake now*".

The Tenants also submitted that the occupant intentionally uses all the hot water, depriving them of hot water.

The Tenant Ms. W.R. submitted that the occupant challenged her to fight and the Tenant had to call the police. The Tenant Mr. C.R. testified that he overheard the occupant threaten his mother.

In response, the Landlord, testified that the Tenants and the occupant would fight like a cat and a dog.

She testified that the occupant of the other rental unit approached her and informed her that the Tenant, Mr. C.R. had been aggressive towards her. The Landlord testified that she attempted to call the Tenants but they would not answer her calls.

The Landlord submitted that the Tenants would not control their dog and would swear at the other occupant.

The Landlord testified that she received the Tenants letter dated March 29, 2017, and in response she spoke to the occupant and asked her to ignore the Tenants. The Landlord testified that based on her observations of how the Tenants were treating her, their aggressiveness, and the reports she was receiving from the occupant, she did not believe the Tenants complaints were valid.

The Landlord's property manager, Ms. M.K. testified that she was hired as the Landlords agent in late May 2017. She testified that she began to receive correspondence from the Tenants. She confirmed that she received two letters from the Tenants in June 2017.

In response to the Tenants written complaints, Ms. M.K. submitted that she wrote a letter to the occupant on June 17, 2017, asking her to be respectful of the Tenants right to quiet peaceful enjoyment.

Analysis

Section 28 of the Act, states that 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;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

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.

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.

The Residential Tenancy Branch Policy Guideline #16 Compensation for Damage or Loss addresses the criteria for awarding compensation. The Guideline provides that damage or loss is not limited to physical property only, but also includes less tangible impacts such as a loss of quiet enjoyment. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I make the following findings:

Loss of Quiet Enjoyment

I find that the Tenants entitlement to compensation for any breach of their right to quiet enjoyment is limited to the period of time after April 6, 2017, where they settled their previous claim.

I find that the Tenants have provided the stronger evidence that they have been disturbed by the other occupant of the rental unit. While acknowledge the Landlord submission that the Tenants were responsible, or partially responsible, for the fighting, the Landlord did not provided any documentation to support her testimony.

There is insufficient evidence from the Landlord that the Tenants were disturbing the lower occupant. I accept that the Landlord issued a 1 Month Notice in part due to alleged abuse of another Tenant on the property; however, the Landlord withdrew that notice as part of the settlement agreement.

The Tenants' provided letters to the Landlord outlining their concerns which were mostly dismissed by the Landlord as baseless.

I find that the Landlord was aware of a problem where the Tenants and other occupant were fighting, and failed to take reasonable steps to protect the Tenants right to quiet enjoyment. The Tenants submitted that the Landlord did not respond to their complaints.

I find that the Landlord's property manager took reasonable steps to address the Tenant's complaints after receiving the Tenant's letters in early June 2017.

I find that the Tenants were disturbed by frequent and ongoing disturbances by the other occupant on the property, and their right to quiet peaceful enjoyment of the rental unit was breached by the Landlord's failure to take adequate steps to respond to their complaints or protect their right.

I accept the Tenants' evidence that the disturbances began again on April 22, 2017, and continued to the end of June 2017. I find that the Tenants are entitled to compensation for this period which amounts to 69 days.

The Tenants are seeking \$400.00 per month in compensation. The Tenants' claim is 47% of the monthly rent owing under the tenancy agreement. I find that the Tenants had full use of the rental unit, and that an award of \$400.00 per month is not a reasonable amount of compensation based on the evidence before me. I find an award of 25% of the monthly rent is appropriate in this case.

I award the Tenants the amount of \$488.67 in compensation for the period from April 22, 2017, to the end of June 2017. This amount was determined by dividing the monthly rent by the number of days of each month and multiplying the result by 25% to get a daily amount. The daily amount was multiplied by 69 days.

Pursuant to section 67 of the Act, I grant the Tenants a monetary order in the amount of \$488.67 for the loss of quiet enjoyment of the rental property. This monetary order may

be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Tenants have established a claim for a loss of quiet enjoyment of the rental property.

The Tenants are granted a monetary award in the amount of \$488.67.

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: July 14, 2017

Residential Tenancy Branch