



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, 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;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to service of the application and evidence on file.

Issues

Are the tenants entitled to monetary compensation for loss of quiet enjoyment, moving expenses and costs associated with the filing of this application?

Background and Evidence

The rental unit is a 2 bedroom condo located on the second floor of a four storey complex. The tenancy began on March 1, 2017 although the tenants did not move into the rental unit until March 28, 2017. The monthly rent is \$2100.00 per month.

The tenants are claiming the equivalent of 3 month's rent paid for the months of April, May and June 2017 plus an additional \$15,000.00 for loss of quiet enjoyment. In addition, the tenants are claiming re-imbursement for expenses incurred in filing this application and \$300.00 for initial move-in costs.

The tenants are claiming there have been excessive stomping noises from the unit above since the day they moved in. They notified the building manager and the landlord of the noise in the beginning of April 2017. The tenants have submitted numerous log book entries detailing the dates and times of noise incidents from the unit above. In addition to the stomping, the tenants allege there is occasional slamming of doors and loud music.

The landlord submits the moment he was notified of the noise complaints he sent an e-mail to the Building Manager and the Strata as he has no rights himself to go to the upstairs unit. The strata sent two formal notices to the upstairs unit regarding the noise complaints. The occupants of the upstairs unit disputed the notices arguing they were within normal noise levels. The landlord submits the majority of the noise incidents documented by the tenants are within the strata noise level times of 8:00 a.m and 10:00 p.m. The landlord submits that aside from the log book entries, the tenants have not submitted any supporting evidence of the alleged noise such as decibel meter readings or audio recordings. The landlord submits the strata have advised they have not received any other noise complaints against the unit in question. The landlord further submits that on August 30, 2017 the strata held a meeting in regards to the noise complaints and ruled it was within regular noise levels for the condo unit on the middle floor. As of the date of the hearing, the landlord had not received any formal documentation from the strata with respect to the meeting outcome.

Analysis

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline #6 "Entitlement to Quiet Enjoyment" provides the following guidance:

In order to prove a breach of the entitlement to quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the rental premises. This includes situations in which the landlord has directly caused the interference or was aware of the interference but failed to take reasonable steps to

correct it. It is also necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. Temporary discomfort or inconvenience does not constitute a basis for a breach under this section.

I find the tenants have not provided sufficient evidence either by way of oral testimony or written submissions to support a finding that there has been substantial interference with their ordinary and lawful enjoyment of the rental premises. The tenants did not provide any recordings of the alleged excessive noise to corroborate the log book entries. I find the landlord has taken reasonable steps to address the tenants concerns by taking the issue up with the building manager and strata. The strata issued formal notices to the unit in question and have held a follow-up meeting ruling the noise level to be within normal noise levels.

The tenants' application is dismissed in its entirety without leave to reapply.

Conclusion

The tenant's 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: September 07, 2017

Residential Tenancy Branch