Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, MNSD, OLC, FF

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- a monetary order for 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 obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

The landlords and the tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlords' legal counsel A.C. (counsel) also attended and stated that he would be the primary speaker for the landlords in conjunction with landlord D.P. (the landlord). Tenant R.G. (the tenant) stated that she would be the primary speaker for the tenants.

While I have turned my mind to all the documentary evidence, including witness letters and the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (Application) and evidentiary package that was sent by Canada Post Registered mail on September 22, 2017. In accordance with sections 88 and 89 of the *Act*, I find the landlords have been duly served with these documents.

On October 30, 2017 the tenants submitted an Amendment to an Application for Dispute Resolution (the Amendment) to the Residential Tenancy Branch (RTB) and

sent the Amendment along with additional evidence to the landlords on this same date by way of registered mail. The landlord acknowledged receipt of the tenants' Amendment and additional evidence. In accordance with sections 88 and 89 of the *Act,* I find the landlords are duly served with the Amendment and additional evidence.

The tenant acknowledged receipt of the landlords' evidence which was put through the tenants' mail slot on November 11, 2017. In accordance with section 88 of the *Act*, I find the tenants are duly served with the tenants' evidence.

At the outset of the hearing the tenant stated that they have given their own notice to end their tenancy to the landlords effective as of November 30, 2017. The landlord confirmed that they have accepted the tenants' notice for November 30, 2017. The tenant requested to withdraw the portion of their Application to cancel the One Month Notice and to have the landlord comply with the *Act*.

The tenants' Application to cancel the One Month Notice and to have the landlords comply with the *Act* is withdrawn.

Issue(s) 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 a monetary award for the return of all or a portion of their security deposit?

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

Background and Evidence

The landlord testified that this tenancy began on July 15, 2015, with a monthly rent of $875.00 due on the first day of each month. The landlord further testified that the monthly rent was increased to $1,000.00 on March 01, 2017, when Tenant R.G. moved into the rental unit. The landlord submitted that they currently retain a security deposit in the amount of $437.50.

The landlord also submitted into evidence:

- a copy a notice to end tenancy from the tenants dated October 27, 2017;

- copies of text messages exchanged between Tenant L.K. and Landlord A.P. from September 2016 to August 2017 mainly concerning noise from the landlords' child during day time hours;
- a copy of a letter dated October 30, 2017, from a drywall contractor who did work on the bathroom of the rental unit indicating that, in his opinion, there was no mould in the bathroom;
- a copy of a letter from the landlords to the tenants dated August 28, 2017, addressing the tenants' request for a rent reduction. The landlords state in this letter that they do not feel they are legally obligated to give a one-time rent reduction, and list the reasons why, but offer a rent reduction regardless of obligation and ask the tenants what amount of reduction is being requested;
- a copy of a letter from the landlords to the tenants dated August 29, 2017, offering a one-time rent reduction of $70.00;
- a copy of a letter from the tenants to the landlords dated August 30, 2017, rejecting the rent reduction and stating that the tenants "..are requesting this to become a professional relationship and nothing more.";
- a copy of a police report concerning an incident that occurred on September 11, 2017, when the latch to the gate was engaged and Tenant R.G. was not able to access their rental unit. Landlord A.P. came home to give access and an argument that occurred between the two. The police report states that "no offence took place" and "no threat or assault occurred". The parties were encouraged to resolve their issues through the RTB; and
- copies of four character reference letters, two from former tenants and two from neighbours, in favour of the landlords.

The tenants submitted some of the same evidence that the landlords did. In addition to the evidence already listed above, the tenants also submitted:

- a copy of an undated written statement from the tenants in response to the One Month Notice to End Tenancy that was issued to the tenant describing the relationship between the landlords and the tenants and how it has deteriorated. The statement also gives information concerning the circumstances surrounding the rejection of an offer of a rent reduction for work done on the bathroom, issues affecting quiet enjoyment of the unit that has occurred due to the landlords' child bouncing a ball and a description of the events that occurred on September 11, 2017;
- copies of text messages exchanged between Landlord A.P. and Tenant L.K. from July 2015 to August 2017;

- copies of text messages exchanged between Landlord D.P. and Tenant L.K. from October 2015 to August 2017;
- numerous pictures showing the latch on the gate and the inside of the rental unit;
- a copy of a written statement from the tenants dated October 30, 2017, describing various issues with the tenancy from September 02, 2016, to the date of the letter. The tenants' statement also outlines the tenants' monetary claim regarding loss of quiet enjoyment.

In addition to the above, the tenants submitted a Monetary Order Worksheet detailing the tenants' total monetary claim which consists of $525.00 for loss of quiet enjoyment from September 2016 to February 2017, 600.00 for loss of quiet enjoyment which affected the tenants ability to use a room in the rental unit for business matters amongst other uses from March 2017 to August 2017, $1,000.00 for loss of quiet enjoyment and restriction of access to the rental unit from September 2017 to October 2017, $1,000.00 compensation for November 2017 rent for unlawful eviction and $500.00 for moving costs totalling $3,625.00.

The tenant testified that they initially disputed the One Month Notice but felt that they were being pushed out their home due to various issues affecting the tenants' quiet enjoyment of the rental unit and decided to give the landlord a 30 day notice on October 27, 2017, to end the tenancy on November 30, 2017, which the landlords accepted.

The tenant stated that their monetary claim is for events that occurred before and after receiving the landlords' One Month Notice and that the landlords have been going out of their way to make the tenants uncomfortable since the issuance of the One Month Notice. The tenant testified that the landlords restricted access to the unit on September 11, 2017, and the police were called. The tenant submitted that Landlord A.P. was caught by Tenant R.G. taking pictures of the inside of the rental unit from outside of the rental unit and the police were called in October 2017. The tenant further submitted that Landlord A.P. called the police on the tenants due to the water being cold sometime in November of 2017.

The tenant stated that mould was found in the rental unit. The tenant further stated that they do not know whether the mould is toxic, but it was part of the reason for issuing their 30 day notice to end the tenancy. The tenant testified that the landlord did two inspections and were advised that the mould is not toxic.

Tenant L.K. stated that the restricted access to the rental unit on September 11, 2017, the landlords' hostile behaviour with unnecessary notices, excessive noise causing loss

of quiet enjoyment and the mould which was discovered after the final inspection on October 29, 2017, was the final straw that led to the tenants giving notice to end the tenancy.

Counsel submitted that the tenants testified that they ended the tenancy due to mould being discovered on October 29, 2017, but noted that the date of the tenants' 30 day notice to end the tenancy is October 27, 2017.

The landlord testified that the relationship between the landlords and the tenants broke down in an August 28, 2017, meeting, which did not go well, regarding a leak from the landlords' bathroom in the upper unit to the tenants' bathroom in the renal unit. The landlord stated that they offered compensation to the tenants after the tenants presented their concerns about a bathroom that was not fully functioning and the smell of putty dust from the repair. The landlord further stated that they offered to clean the tenants' bathroom which was refused and also offered to shampoo the carpets, which was also refused and then a text message was received on August 22, 2017, from the tenants with their concerns.

Landlord A.P. testified that after the One Month Notice was issued to the tenants, the landlords did not increase their noise and made their boys stay upstairs. Landlord A.P. stated that the only time that she yelled at the tenants from upstairs was on November 15, 2017, when she felt the hot water tank was being tampered with due to the water being cold.

Landlord A.P. stated that when she received a call from Tenant L.K. that the gate was locked on September 11, 2017, she was just about to pick her kids up from school but instead went back home to unlock the gate give access to the rental unit. Landlord A.P. stated that when she arrived, she was met with aggression from Tenant R.G. Landlord A.P. submitted that when the gate is slammed, it sometimes locks on its own.

Landlord A.P. testified that the only pictures that she has taken of the inside of the rental unit is when the landlords performed an inspection, after giving the tenants 24 hours' notice, and the police were present to keep the peace at that time. Landlord A.P. stated that all noise complaints were through text and that the landlords addressed the issues as soon as notified.

The tenant testified that they originally made their complaint about mould on August 22, 2017, when the tenant asked for $100.00 rent relief due to the work done on the

tenants' bathroom. The tenant stated that they asked the landlords for an inspector to check the bathroom but only received the drywall contractor's opinion.

The tenant testified that the gate was intentionally locked as the only way to lock the gate is from the inside and that the latch needs to be physically lifted and pushed through a hole. The tenant argued that there is no way that gravity can lock the gate on its own through slamming the gate. The tenant testified that they have witnessed the gate being locked by the landlords' children during the day.

Counsel submitted that the relationship became acrimonious and questioned the tenants' complaints about loss of quiet enjoyment being substantial and that there were only temporary discomforts suffered by the tenants. Counsel further submitted that quick repairs were done on the bathroom and the drywall contractor confirmed in writing that mould is not toxic. Counsel stated that there is no evidence that the tenants were intentionally locked out as Landlord A.P. attended to the situation as soon as she was notified about it and that this minor inconvenience to the tenants was not basis for compensation.

Counsel stated that the tenants are claiming for loss of quiet enjoyment due to the children making noise going back months in the past but not in the present. Counsel further stated that every once in a while the landlords' children would make too much noise, the tenants would send a text, the landlord would address the issue and respond and that tenant would state that is was not a problem. Counsel contended that these incidents were not substantial and were temporary isolated incidents.

The tenant responded that there have been more noises in the last few months which have not stopped and are not temporary. The tenant argued that the landlord refused to accommodate the tenants by addressing the issue in a permanent fashion.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

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 38 of the *Act* establishes that a landlord is only obligated to address the security deposit after the tenancy has ended and the tenants have provided their forwarding address in writing to the landlords. As this tenancy had not yet ended as of the date of the hearing, I find the tenants had no legal right for the return of the security deposit at that time. For this reason, I dismiss the tenants' application for a return of their security deposit, with leave to reapply.

I find the tenants bear the burden to prove that they suffered a loss and were unable to do things in parts of the rental unit due to unreasonable noise from the landlords for the period of September 2016 to August 2017.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment, including but not limited to, reasonable privacy and freedom from unreasonable disturbance. RTB Policy Guideline #6 states that "a breach of quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises…. and that 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."

Based on the documentary evidence, I find that there is evidence of seven recorded incidents of noise caused by the landlords' children over a span of seven months for the period of February 2017 until August 2017. I find that in each of these instances the landlord responded to the tenants' texts and the noise was ceased immediately upon the landlords being notified of the noise as the tenant acknowledged the landlords responses.

I find that an average of one instance of excessive noise per month, which is ceased upon notification of the noise, is not a substantial interference with the ordinary and lawful enjoyment of the premises and is not considered frequent. I further find that the incidents that the tenants are claiming for were not ongoing as the noise was ceased by the landlords as soon as they were notified. I find that the tenants did not consider that these instances of noise were worthy of compensation until the relationship between the landlords and the tenants fractured and the tenants were served with a One Month Notice.

I find that the tenants have not demonstrated any tangible loss suffered in their business due to these incidents other than temporary discomfort and inconvenience. For the above reasons, the tenants' Application for compensation for loss of quiet enjoyment for the period of September 2016 to August 2017 is dismissed.

I find the tenants bear the burden to prove that they suffered a loss for the period of September 2017 to November 2017 due to restriction of access to the property on September 11, 2017 and hostile behaviour from the landlords resulting in a loss of quiet enjoyment for the tenants.

Based on the affirmed testimony, documentary evidence and a balance of probabilities, I find there is no evidence provided of unreasonable noise above the regular noises of daily living during this period. I find that there is only one instance of the tenants' access being restricted and that the landlord responded to it as soon as they were able to, changing their plans to do so, which demonstrates that the landlords were not intentionally interfering with the tenants. I find that even if the gate was locked by someone, it was not done with the intention of interfering with the tenants. I find that the police report for the incident on September 11, 2017, provided by the landlord states that "no offence took place" and that "no threat or assault occurred".

I find that the landlords' notices regarding issues surrounding garbage and hydro usage are simply standard communications between landlords and tenants who share the same residential premises. For these reasons, I dismiss the tenants' request for compensation in relation to these issues.

However, based on the affirmed testimony of the tenant and documentary evidence showing a police file number and the tenant addressing the situation in writing to the landlord in two letters dated October 16, 2017, and October 28, 2017, I accept the tenants' testimony of the landlord taking pictures from outside of the rental unit into the window of the rental unit. I find that that this instance is a violation of the tenants' rights under section 28 of the *Act* for reasonable privacy.

I further find that, based on the testimony of both parties, that Landlord A.P. yelling at the tenants from the upstairs unit and calling the police on the tenants due to hot water issues is an unreasonable disturbance and a violation of the tenant's right to quiet enjoyment of the rental unit. I find that it is the landlords' responsibility to provide residential premises suitable for occupation for the amount of occupants residing there, including a hot water tank that is equipped to handle the needs for four adults and two children.

The tenants bear the burden to prove that their eviction was unlawful and that they are entitled to compensation in the form of one month's rent and moving costs for November 2017.

Section 47 of the *Act* allows a landlord to issue a One Month Notice to End a Tenancy for Cause and allows a tenant to dispute the One Month Notice. I find that the landlords were within their rights to issue the One Month Notice and that the tenants were within their rights under section 47 of the *Act* to dispute the One Month Notice, which they have withdrawn and issued their own notice to end the tenancy, of their own volition, under section 45 of the *Act*.

I find that the reason that the tenant gave for issuing their own 30 day notice for mould issues is not supported with any evidence from the tenant to show that the mould is toxic, which is the tenants' burden to prove as they are the ones making the claim.

Furthermore, if the tenancy is ending because of the tenants' issuance of their own notice to end tenancy, I find this is a choice made by the tenants and the landlord is not responsible to compensate the tenants for their own choices.

Based on the above, I find that there was no unlawful eviction and that the tenants' request for one month's rent in compensation and moving costs are dismissed.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

RTB Policy Guideline #16 states that an arbitrator may award nominal damages 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.

I find that the tenants have proven two instances where there have been infractions of their legal rights which are protected under section 28 of the *Act*. For this reason I award nominal damages in the amount of $25.00 for each of these incidents for a total monetary award in the amount of $50.00

For the above reasons, the remainder of the tenants' application is dismissed.

As the tenants have been partially successful in this application, I allow the tenants to recover half of the filing fee from the landlords.

Conclusion

Pursuant to section 67 of the *Act*, I grant a monetary Order in the tenants' favour in the amount of $100.00 which is for half of the filing fee at $50.00 and nominal damages for two incidents of violations under section 28 of *Act* at $25.00 for each incident.

I dismiss the tenants' Application for a return of the security deposit, with leave to reapply.

I dismiss the remainder of the tenants' Application, 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: December 14, 2017

Residential Tenancy Branch