



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: PSF, FFT

Introduction

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

- a. An order that the landlord provide services or facilities required by the Act, Regulations and/or tenancy agreement.
- b. An order to recover the cost of the filing fee.

The landlord failed to appear at the scheduled start of the hearing which was 11:00 a.m. on August 10, 2018. The tenant applicant was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the landlord to call in. The landlord failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The tenant was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The applicants contacted the landlord by e-mail. She requested that the Application for Dispute Resolution/Notice of Hearing be served on her by e-mail. The applicant testified he sent it to her by e-mail and she replied confirming that she received it. I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord on June 19, 2018 as the landlord acknowledged receiving it on that date. :

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order that the landlord provides services or facilities required by the Act, Regulations and/or tenancy agreement?
- b. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on August 1, 2017. The tenancy agreement provided that the tenant(s) would pay rent of \$1250 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$625 at the start of the tenancy. The tenants testified they have ended the tenancy effective July 31, 2018. They vacated the rental unit on July 23, 2018.

The tenant testified they made over 20 complaints to the downstairs tenant about excessive noise starting December 2017 to the end of the tenancy. They have made the landlord aware of the problems on more than 4 occasions. The police have been called. The landlord failed to take reasonable steps to correct the situations.

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. (my emphasis)**

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. (my emphasis)

Analysis

As the tenant has now vacated the rental unit I dismissed the Tenant's application for an order that the landlord provide services or facilities required by the Act, Regulations and/or tenancy agreement as that issue is moot. However, I determined the tenants are entitled to recover the cost of the filing fee 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 for the cost of the filing fee.

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: August 10, 2018

Residential Tenancy Branch