Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was scheduled to deal with a tenant's application for monetary compensation for damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

At the outset of the hearing, I explored service of hearing documents upon each other and the Residential Tenancy Branch. The tenants submitted that they sent their Application and other required documents, including the Amendment(s), to each of the named landlords via registered mail on March 17, 2018. The landlords confirmed receipt of the documents with the exception of the Amendment(s).

I noted that one of the Amendments was to remove the nickname of one of the landlords. The landlord consented to this change and I have amended the style of cause.

The other Amendment was to increase the monetary claim but it was not accompanied by another Monetary Order worksheet. I noted that the receipts the tenants attached to the Amendment were for costs associated to preparing and serving their hearing documents which are not recoverable under the Act. Accordingly, I did not permit the monetary claim to be increased and I was unnecessary to make a decision as to whether the Amendment was sufficiently served.

The landlords submitted a written response and evidence to the Residential Tenancy Branch but pointed out they did not have a current service address for the tenants. The tenants filed their Application in March 2018 but the tenants had moved out of the rental unit on May 31, 2018 or June 1, 2018 and did not provide a new service address to the landlords. The landlord testified that he sent the landlords' response to the rental unit address via regular mail on September 12, 2018 as that was the only service address provided. The landlords' new tenants received the packages.

An applicant is required to provide the respondents with a service address at which they may be served the respondent's responses and evidence. As I informed the tenants, if an applicant moves it is upon the applicant to provide an updated service address to the respondent or enlist the services of a mail forwarding service. It is not upon the respondents to track down the applicants to obtain a new service address. I was satisfied the landlords met their burden to serve the tenants with their response and evidence using the only service address provided to them by the tenants. I explored options with respect

to including the landlord's evidence that he tenants had not seen. The tenants indicated that they wished to proceed with the hearing as scheduled even if I accepted and considered the landlord's evidence. Accordingly, I proceeded with the hearing and all parties were expressly informed that I would be considering the landlord's written responses and evidence in making this decision.

Issue(s) to be Decided

Have the tenants established an entitlement to compensation for loss of quiet enjoyment from the landlords in the amounts claimed?

Background and Evidence

The six month fixed term started on December 1, 2017 and was set to expire on May 1, 2018 and then continue on a month to month basis. The tenants paid a security deposit of $750.00 and a pet damage deposit of $500.00. The tenants were required to pay rent of $1,500.00 on the first day of every month. The tenants vacated the rental unit on May 31, 2018 or June 1, 2018.

I heard he rental unit is the upper level of an older wood frame single family dwelling that has an illegal basement suite in the lower level that is also tenanted. The landlords purchased the house in 2015. When the landlords purchased the property they inherited the existing tenant in the basement suite. The upper level has always been used as a rental and the landlords have never occupied the property.

By way of this application the tenants seek compensation for loss of quiet enjoyment. Below, I have summarized the parties' respective positions.

The tenants submitted that they experienced an unreasonable amount of noise coming from the basement suite tenant the day they moved in, on December 1, 2017.

The parties provided consistent submissions that the tenants notified the landlord's agent of the noise disturbances orally in a conversation they had in January 2018 and by way of a text message sent on February 11, 2018. The tenants stated that after making complaints to the landlord's agent the landlord's agent would speak with the basement suite tenant and the noise would abate for a few days but then resume. As a result there were multiple communications to the landlord's agent concerning noise, among other complaints, regarding the basement suite tenant.

In March 2018, the tenants eventually complained to the city but that avenue was not effective. The tenants then called the police who took the position it was a matter the tenants should address with the landlord. The tenants proceeded to file their Application for Dispute Resolution. I noted that the tenants had not sought orders for compliance which would have likely yielded an earlier hearing date. The tenant explained that she erred in filing the application and after the hearing date was set she enquired about requesting orders for compliance and was told she would have to make another Application and pay another filing fee. The tenants chose not to file another Application due to the associated costs to do so.

The tenants primarily focused on the noise described as being construction noises (banging, hammering, running power tools, and screeching metal) coming from below the sundeck where the basement suite tenant made wood boxes and toasters. The tenants described how the noise would typically start at about 1:00 p.m. and last until 5 p.m. every day and then resume at 6:30 p.m. until about 9:00 p.m.,

sometimes later every day. The tenants submitted that the noise continued until the day their tenancy ended. The tenants provided video/audio recordings of the noise they could hear from various rooms in the rental unit and a log of activity to demonstrate their position. The tenants also provided various text messages exchanged with the landlord.

I heard that the female tenant runs her own business from the residence and she often requires a quiet environment to create content but the construction noise interfered with her ability to work a significant amount of the time. The tenants submitted that the female tenant was largely distressed by the noise in general which impacted the male tenant. As a result, the tenants seek compensation of $4,500.00 for the female tenant's loss of work, calculated as 3 hours per day for four months at the rate of $25.00 per hour. In addition, the tenants seek a rent abatement of $2,000.00 calculated as 1/3 of the monthly rent for four months.

The tenants submitted that when the tenancy formed the tenants informed the landlord that the tenant runs a business from home which included creating content and making audio recordings.

The landlord submitted that they had never received a complaint about noise coming from the basement suite tenant before these tenants started making complaints and the landlords had never occupied the property so they were unaware of the extent of the construction noise.

The landlord acknowledged that the tenants made several complaints about not only the construction sounds, but also the basement suite tenants closing the door too loudly and doing dishes and laundry. The landlord spoke with the basement suite tenant about his construction hobby in an effort to have him scale back on his activities; looked into getting a softer closing door; addressed the laundry schedule; and, reallocated the utility bills between the tenants. With respect to the construction noise, the landlord also went to the Residential Tenancy Branch and heard that the basement suite tenant also has a right to enjoy his hobbies and that the landlords may sued by the basement suite tenant if the landlords deprived him of his hobbies.

The landlords evidence included a written submission, a letter from the basement suite tenant, various emails and text messages exchanged with the tenant; and, photographs.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 28 of the Act provides that a tenant has a protected right to quiet enjoyment, which includes, but is not limited to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 6: *Entitlement to Quiet Enjoyment* provides information and policy statements with respect to a tenant's right to quiet enjoyment. The policy guideline provides, in part:

> 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.
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> 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.
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> 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.
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> 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.
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> **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.
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> [My emphasis underlined]

Pursuant to section 28, every tenant has the right to use and enjoy the property they rent and a landlord is obligated to protect that right. Where a landlord has multiple rental units on a residential property, the right to quiet enjoyment by each tenant is equal. In other words, the right of one tenant does not trump another tenant's right. Where a tenant complains to a landlord that they are being unreasonably disturbed by the actions of another tenant the landlord is expected to investigate and take reasonable action in the circumstances.

At issue for me to determine is whether the landlord's efforts to protect the tenants' right to quiet enjoyment was reasonably sufficient in the circumstances and whether the tenant's expectations were reasonable.

I heard that the tenant complained of many different types of noises, including the basement suite tenant doing dishes, laundry and closing the door too loudly; however the tenants' primary focus during the hearing related the sound of construction noises and I focus my analysis on that.

In this case, the parties were in agreement that the tenant had complained to the landlord starting in January 2018 that she was being disturbed by the actions of the basement suite tenant and a number of times thereafter and in response the landlord would speak with the basement suite tenant which lead to a brief reprieve in the construction noises before the tenant started complaining again.

I accept that the landlords' submissions that they were unaware that the basement suite tenant's actions were unreasonably disturbing before receiving complaints from the tenants in January 2018 as there is no evidence to suggest otherwise. I also accept that the landlord did not sit idly by and permit the basement suite tenant to disturb the tenants after the tenants started complaining as he did speak with the basement suite tenant a number of times, sought out a way to reduce the sound of the door closing, addressed the laundry scheduled, and, had the electricity bills reallocated between the tenants.

Under section 32 of the Act, a landlord has the obligation to repair and maintain a property so that it is suitable occupation and meets applicable health and safety and building standards, but a landlord's obligation also takes into account the age and character of the building. Where there are multiple units in an older wood frame house originally designed to be a single family dwelling, given the age and character of the building, tenants ought to expect some noise transference between units that may be greater than that in a rental unit located in a purpose built unit in a multiple unit building.

Given the nature of the tenant's complaints, including sounds of doing dishes and laundry, I find the tenant's expectations with respect to the level of noise in the building may have been unreasonable. The tenant's decision to run her business that requires a high level of quiet from the residence is her decision but I am of the view that it is unreasonable to expect others to accommodate her business decision. Accordingly, I proceed to on the basis of what an average person would consider to be unreasonable noise disturbance.

The landlord explained that after speaking with an Information Officer at the Residential Tenancy Branch he believed the basement suite tenant was entitled to enjoy his hobbies and that the landlord may be sued if the landlord interfered with that. I have no way to verify that information; however, it is not a basis to exempt the landlord from protecting the tenants' right to quiet enjoyment. Every tenant is entitled to enjoy their hobbies as part of their right to use and enjoy their unit; however, it would not be reasonable to expect that one tenant's hobbies are permitted to continue in every circumstance, such as where the activity may damage the property or unreasonably disturb others. The example I gave to the parties during the hearing was a tenant who enjoys playing the drums. I am of the view that it would be unreasonable for other tenants on the property to have to tolerate listening to loud drum playing at all hours of the day or night because another tenant enjoys playing the drums a lot.

The tenants provided detailed descriptions and audio/video evidence in support of the many hours per day the basement suite tenant would spend doing his woodworking or construction hobby and I accept that it is unreasonably disturbing to listing to those noises for such great lengths of time nearly every day.

After the tenants complained to the landlord in January and February 2018 and the landlord's efforts to speak with the basement suite tenant proved to be ineffective in reducing the noise level for more than a temporary period, I am of the view the landlord ought to have escalated enforcement to protect the tenants' right to quiet enjoyment. It is apparent to me that starting in March 2018 the tenants became so frustrated that they started making complaints to the city, the police and filed their Application with the Residential Tenancy Branch. Considering the noise did not improve, I find tenants are entitled to compensation from the landlords for the months of March 2018, April 2018 and May 2018.

Although I am satisfied the tenants have established an entitlement to compensation, I find their claim of $6,500.00 ($4,500.00 + $2,000.00) for loss of quiet enjoyment for four months to be excessive and unreasonable. The tenants only paid rent of $6,000.00 in rent for that time period and to award the tenants $6,500.00 would result in the landlords paying the tenants to live at the rental unit with is unreasonable.

Since the tenants we repaying $1,500.00 per month to use and enjoy the rental unit, I find it reasonable to determine the tenants' damages for breach of the Act in relation to the monthly rent obligation. The tenants requested 1/3 of their monthly rent as attributable to loss of quiet enjoyment and I find that request reasonable considering the amount of time they were disturbed by the other tenant on a daily basis. Therefore, I award the tenants compensation of $500.00 per month for the three months of March 2018 through May 2018, or $1,500.00.

I further award the tenants recovery of the $100.00 filing fee.

In light of the above, I provide the tenants with a Monetary Order in the sum of $1,600.00 to serve and enforce upon the landlords.

Conclusion

The tenants were partially successful in their claims against the landlords and have been provided a Monetary Order in the sum of $1,600.00 to serve and enforce upon the landlords.

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: October 05, 2018

Residential Tenancy Branch