Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both landlords, the landlords' agent, the landlords' witness, the landlords' interpreter and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified that the landlords were individually served the notice of dispute resolution packages by registered mail on August 18, 2018. The tenants entered the tracking numbers and receipts from Canada Post into evidence. The landlord's agent confirmed receipt of the dispute resolution packages but did not know on what date. I find that the landlords were deemed served with these packages on August 23, 2018, five days after their mailing, in accordance with sections 89 and 90 of the *Act.*

Issue(s) to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act?*
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act?*

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 31, 2018 and officially ended on June 1, 2018. Monthly rent in the amount of $1,850.00 was payable on the first day of each month. A security deposit of $925.00 was paid by the tenants to the landlords. At the end of the tenancy the landlords returned the security deposit to the tenants. The subject rental property is a house with an upper and lower suite. The tenants lived in the lower suite. A written tenancy agreement was signed by both parties on March 6, 2018 and a copy was submitted for this application.

The tenants testified that the landlord failed to inform them that the upstairs tenant operated a daycare prior to entering into the tenancy agreement and that the constant noise from the upstairs tenants resulted in a loss of quiet enjoyment. Prior to signing the tenancy agreement, the tenants testified that they were aware that a family lived in the upper unit.

The landlords testified that the tenants were told prior to signing the tenancy agreement to go and talk to the upstairs tenant to make sure they would be happy living below a daycare. The upstairs tenant ("witness N.M.U") testified that her three nieces live with her, aged two, six, and seven, and that she operates an at home day-care for three other children under the age of five from 8:00 a.m. to 5:30 p.m. on weekdays. Witness N.M.U. testified that one week before the tenants moved in she spoke with them and told them about the daycare.

The tenants agreed with witness N.M.U. that they were informed of the upstairs daycare roughly one week prior to their move in date and that they did not have the ability to arrange for alternate accommodation in that time frame.

The tenants testified that one of them is home every day taking care of their baby and that they knew right away that they would not be able to continue living in the subject rental property due to the noise from all the children running, playing and crying at all hours of the day. The tenants entered into evidence sound recordings of children crying and making noise which the tenants testified were taken in their living room.

The tenants testified that on April 17, 2018 they sent a letter to the landlord via registered mail, which gave notice to the landlord of the tenants intention to vacate the subject rental property by June 1, 2018 due to “unreasonable noise and lack of privacy at the house…interfering with [their] right to “quiet enjoyment” of [their] suite”. The letter goes on to say that the landlords only advised the tenants that small family resided in the upper suite and that had they known of the daycare, they would not have signed the tenancy agreement. The letter concluded by asking the landlords to sign a Mutual Agreement to End Tenancy.

Tenant A.D. testified that on April 19, 2018, two days after he sent the April 17, 2018 letter, he spoke with one of the landlords about the letter and the Mutual Agreement to End Tenancy. Both parties agree that on April 30, 2018 both parties signed the Mutual Agreement to End Tenancy effective June 1, 2018.

The landlords’ agent testified that the landlords did not receive the letter dated April 17, 2018. I looked up the Canada Post Tracking number provided by the tenant on the Canada Post Website and it stated that a package was sent on April 17, 2018 and was signed for on April 19, 2018.

The tenants entered into evidence a text message from tenant C.M. to the landlords’ agent complaining about the noise from all the people upstairs. The tenants testified that the text was sent on May 18, 2018. The landlord’s agent acknowledged receipt of the text message. The tenants testified that the noise from upstairs did not diminish and that the landlords did not take any significant action to reduce the noise. The landlord’s agent testified that she did speak to the upstairs tenant about keeping the noise down.

The landlords’ agent testified that since the tenants have moved out the landlords have come to the subject rental property without advising the upstairs tenant to see how noisy it is in the suite the tenants used to occupy. The landlord’s agent testified that the noise was at a reasonable level.

The tenants testified that when they moved into the subject rental property they hired a u-haul in the amount of $74.21. The tenants entered a receipt showing same. The tenants testified that when they moved out they hired a moving company which cost $483.00. A receipt showing same was entered into evidence. The tenants are seeking to recover their moving costs from the landlords.

The tenants testified that the landlords only provided them with one set of keys, 7 keys in total and that they had to pay for the keys to be duplicated which cost $44.90. A receipt for same was entered into evidence. The tenants testified that the landlord should have provided them with two sets of keys and that the landlord should reimburse them for the cost of cutting the keys. The landlord testified that only one set of keys was provided to the tenants.

The tenants testified that they are seeking to recover $1,850.00, their full monthly rent, for each month they lived at the subject rental property, for a total of $3,700.00 for loss of quiet enjoyment.

In summary, the tenants are seeking the following:

Item	**Amount**
Move in expenses	$74.21
Move out expenses	$483.00
Keys	$44.90
Loss of quiet enjoyment	$3,700.00
Total	$4,302.11

Analysis

Loss of Quiet Enjoyment

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 *[landlord's right to enter rental unit restricted]*;

(d)use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Policy Guideline 6 states that a landlord is obligated to ensure that the tenants' 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.

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.

I find that the sounds of children from a family in a suite above a tenant does not qualify as an unreasonable disturbance; however, in this case, the noise complained of resulted not from a family alone but a family and a daycare. I find that the tenants were not informed that the upper tenants operated a daycare prior to entering the tenancy agreement. In making this finding, I accepted the tenants' testimony over that of the landlords as both the tenants' and witness N.M.U. testified that the tenants were informed of the daycare roughly one week before the tenants moved in and the tenancy agreement was signed approximately three weeks before the tenants moved in.

Based on the testimony and evidence of the tenants and the Canada Post Tracking website, I find that service of the April 17, 2018 letter was effected on the landlords on April 19, 2018. This temporally coincides with the subsequent signing of the Mutual Notice to End Tenancy signed by both parties on April 30, 2018.

Based on the testimony and evidence provided by the landlord I find that the noise from the upper tenant's daycare constituted an unreasonable disturbance, contrary to section 28 of the *Act* and that the landlords failed to take enough steps to address the tenants' concerns. I find that the tenants are entitled to receive $400.00 per month that they resided at the subject rental property for loss of quiet enjoyment, for a total of $800.00.

As the tenants voluntarily entered into a Mutual Agreement to End Tenancy, I find that they are not entitled to recover moving expenses.

The tenants did not point to any section of the tenancy agreement or any section of the *Act* which stated that the landlord was required to provide two sets of keys. I find that the tenants are not entitled to recover the cost of having keys cut.

As the tenants were successful in their application, I find that they are entitled to recover the $100.00 filing fee from the landlords.

Conclusion

I issue a Monetary Order to the tenants in the amount of $900.00.

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: November 21, 2018

Residential Tenancy Branch