Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RR, FFT

Introduction

On October 23, 2018, the Tenants applied for a Dispute Resolution proceeding seeking a rent reduction pursuant to Section 65 of the *Residential Tenancy Act* (the "*Act*"), seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. G.M. and V.W. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package and evidence to the Landlord by hand on October 27, 2018 and the Landlord confirmed that he received this package. Based on this undisputed evidence and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

The Landlord advised that the evidence was posted to the Tenants' door and emailed to them on November 22, 2018. The Tenant confirmed that he received this evidence, had reviewed it, and was prepared to respond to it. As such, I have accepted this evidence and considered it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a rent reduction?
- Are the Tenants entitled to an Order that the Landlord comply?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2018 and ended when the Tenants vacated the rental unit on November 30, 2018. Rent was established at $2,300.00 per month, due on the first day of each month. A security deposit of $1,100.00 and a pet damage deposit of $200.00 were paid.

The Tenants are seeking compensation in the amount of **$2,612.71** for moving costs as "the Landlord has made staying in the rental unbearable to the point that the Tenants are forced to move due to noise, no maintenance and fear of threats."

The Tenants are also seeking compensation in the amount of **$1,000.00** per month for the months of May to October, totalling **$6,000.00** "based on lack of quiet enjoyment, lack of maintenance, breaches of privacy, harassment and intimidation." The Tenant submitted that they viewed the rental unit twice and asked if the dog that they heard upstairs would be living there and V.W. stated that it would not. He said that he was told that the upstairs would be mostly vacant except when the Landlord arrived in the summer months; however, from April to June, V.W. and the dog lived in the upstairs rental unit, with the exception of a segment of time in May. As well, G.M. lived in the upstairs on the weekends. In late June, the Landlord moved into the upstairs as well until he moved out at the end of September. At the end of August, the Tenants heard puppies in the upstairs and heard "extreme dog and puppy noise" for two weeks in October. At the end of October, V.W., G.M., and the dog moved out of the upstairs rental unit.

The Tenant referred to emails, dated April 3 and 14, 2018, submitted as documentary evidence informing the Landlord of the dog barking and noted a reply email from V.W. acknowledging the dog's barking and her attempt to reduce it by way of an electric collar. However, she moved out with the dog. On May 28, 2018, they received an email indicating that the Landlord would be moving in with noisy relatives and an email on June 25, 2018 indicating that the dog would be moving back in and may bark when

alone in the house. He also cited emails from July 19 and 20, 2018 advising the Landlord of the unbearable noise. He indicated that there was continual barking and growling from the dog at all hours.

The Tenants advised that their privacy was not considered when the Landlord was painting on their patio and stripping the deck with a loud, gas powered machine. As well, he spoke of an awkward inspection of the rental unit where the Landlord was accompanied by two other ladies. He also speculated that the Landlord went into the rental unit when they were on vacation

He advised that they had problems with the washing machine and that they asked the Landlord repeatedly to fix these issues; however, the Landlord simply provided them with the manual for the washing machine, implying that they were using it incorrectly. He referenced multiple emails to the Landlord with respect to this issue. He stated that the machine was eventually fixed on August 4, 2018. The Tenants also gave the Landlord a list of other repairs; however, those issues were not corrected. Furthermore, they listed items that they felt were issues of “intimidation & harassment” by the Landlord and speculated that they were “purposely harassed all summer long hoping that [they] would move out.”

V.W. advised that the Tenants met the dog and they were advised that the dog would be in the upstairs of the house, but she stated that from April to June, she did not live in the upstairs with the dog. She submitted that she moved into the upstairs in late June and G.M. moved in in September. She advised that she tried to mitigate any noise issues raised by the Tenants by purchasing a dog collar to prevent the dog from barking, by purchasing carpets to lay down on the floor to minimize noise transference, and by doing their best to be as quiet as they could. She also stated that the Tenants’ cat was a cause for the dog’s barking. The Landlord acknowledged that he lived on the property with V.W. from July to October and he submitted a letter dated November 22, 2018 corroborating that V.W. lived at a different address until moving into the property with the Landlord in July 2018. He also refuted the Tenants’ allegations regarding the dog’s behaviour and advised that the dog was fixed so she could not have given birth to a litter of puppies.

Regarding the Tenants’ breach of privacy, the Landlord submitted a statement dated November 21, 2018, as documentary evidence, from a past tenant stating that they did not suffer from any noise related issues from the upstairs. The Landlord advised that the noise that was created when they lived in the upstairs was just general, everyday noise

created by living in a normal manner and was not unreasonable. In addition, he submitted evidence to demonstrate that he took steps to mitigate any noise issues by purchasing carpets to dampen any sounds.

Furthermore, V.W. stated that the Tenants do not have any proof of the Landlord entering the rental unit without the proper written notice. As well, the Landlord stated that the proper written notice was provided to enter the rental unit. V.W. and the Landlord advised that the backyard is for the use of the Tenants but not a part of the rental unit; therefore, the Landlord will do any required maintenance of the backyard that is necessary.

The Landlord submitted that the Tenants notified them of an issue with the washing machine and that V.W. inspected it but found nothing wrong. When the Tenants advised that there was still a problem in May, the Landlord contacted the manufacturer and was told to consult the washing machine manual for troubleshooting. The Tenants were then provided with the manual and the Landlord did not hear anything further until the Tenants contacted them in July. The Landlord then had an acquaintance clean out the filter and repair the problem.

The Tenant stated that they were told that the dog would not live upstairs, and the Landlord would not live there in the summer. He stated that when the Landlord came by to clean the mold in the rental unit in April, he could hear the dog barking and did not deny this. He stated that he has emails from the Landlord advising that the noise issues would get better; however, the noise became worse after August.

V.W. stated that the Tenants were never advised that the dog would not be there, and she stated that the dog only stayed overnight in the upstairs occasionally. She stated that the dog never barked constantly and that it is fixed, so there is no way that it could have given birth to a litter of puppies.

Finally, both parties agreed that there was a dispute over the utilities owed and the Tenants requested that an arbitrator simply determine the exact amount of utilities owed. However, the parties advised that they would deal with this issue by themselves.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 28 of the *Act* outlines the Tenant's right to quiet enjoyment and states that the Tenant is entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29, and use of common areas for reasonable and lawful purposes, free from significant interference."

Section 32 of the *Act* requires that the Landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, make it suitable for occupation by the Tenant.

Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute.

Section 67 of the *Act* allows for an arbitrator to determine the amount of compensation to be awarded to a party if a party has not complied with the *Act*.

Policy guideline # 6 outlines the covenant of quiet enjoyment and states the following:

> 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.
>
> 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.

With respect to the Tenants' claims for compensation for loss, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline #

16 outlines that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

The first issue I will address pertains to the Tenants’ request for moving costs in the amount of $2,612.71. During the hearing, the Tenant was advised that there are no provisions in the *Act* to allow for compensation of such claims. As such, I dismiss this portion of the Tenants’ claims in their entirety. However, I find it important to note that to support this claim, the Tenants provided an invoice for moving costs, but the date on the invoice is at least nine months prior to the Tenants ever having moved into the rental unit. Moreover, there is no evidence submitted that the Tenants hired movers to move out from the rental unit. This unsubstantiated claim for the cost of moving out of the rental unit, that does not appear to have even been paid for, causes me to be suspicious of the Tenants’ claims in general as they are asking for an amount of money that was never spent. As such, this causes me to be dubious of the legitimacy of the Tenants’ additional claims.

Regarding the Tenants’ claims for compensation, the burden of proof is on the party making the Application to establish their claims. The Tenants requested an amount of $1,000.00 per month for six months; however, they did not specifically outline exactly how they came to this figure and did not provide details justifying how their claims of loss were equivalent to this specific amount. As stated above, Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute to make their claims clear to all parties. Similarly, when it came to the issue of the undetermined outstanding utilities, the Tenants simply wanted an arbitrator to make a determination with respect to how much would be owed without specifically outlining their claim. As the Tenants’ claims for compensation in the amount of $1,000.00 per month are more general in nature, I do not find that the Tenants have met the burden of proving their case that the losses that they have claimed to have suffered are equivalent to the amount they are seeking. However, I will still make a determination on if they have established that any compensation should be awarded for breaches of the *Act*. With respect to the issue of the utilities, as the parties advised that they would sort this issue out by themselves, I decline to render a decision on this.

When reviewing the totality of the evidence before me, there are conflicting submissions with respect to the timelines of who lived in the upstairs part of the property and when. Regardless, when sharing a property, a reasonable amount of noise cannot be avoided

and should be expected. While the Tenants allege that there were significant, continual breaches of their quiet enjoyment, the Landlord has provided evidence that steps were taken to reduce these issues. As the burden of proof is on the Tenants to substantiate the significance of their claims, based on the conflicting evidence before me and their suspect claim for moving costs, I question that the breaches that the Tenants have portrayed were as significant as they allege. As such, I am not satisfied, on a balance of probabilities, that the Tenants have established their claim in this respect. Primarily, this situation appears to be mostly an inability between the parties with respect to being able to live agreeably within a shared property.

However, I do find that there were some maintenance issues that were neglected by the Landlord. While the Landlord did address some issues like the mold in the windows, the *Act* requires that the Landlord provide a rental unit that complies with the health, safety, and housing standards and is suitable for occupation by the Tenants. I do find that the Tenants were provided with a rental unit that had some deficiencies in cleanliness that were not their responsibility to clean at the outset of the tenancy. As such, I am satisfied that the Tenants should be awarded a nominal amount of compensation in the amount of **$150.00** to rectify these issues.

Ultimately, I do not agree that the Tenants' total claims of loss are commensurate with the loss that the Tenants portray to have endured. Consequently, I am satisfied that the Tenants have only substantiated a claim for compensation in the amount of **$150.00**. As the Tenants were partially successful in their claims, I find that the Tenants are entitled to recover the $100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Compensation for loss	$150.00
Recovery of filing fee	$100.00
TOTAL MONETARY AWARD	**$250.00**

Conclusion

The Tenants are provided with a Monetary Order in the amount of **$250.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: January 3, 2019

Residential Tenancy Branch