



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT OLC CNR MNDCT

Introduction

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

- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a determination regarding their dispute of a rent increase by the landlords pursuant to section 43; and
- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 46; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties 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 they personally served the landlords with the notice of dispute resolution package and their evidence on December 10, 2018. The tenants testified that they personally served their amendment of their application for dispute resolution on January 10, 2019 to add a claim to cancel the Ten-Day Notice and to increase the amount of their monetary claim. I find that the landlords were served in accordance with section 89 of the *Act*.

Preliminary Issues:

Ten-Day Notice Cancelled

As that outset of the matter, the landlords stated that the Ten-Day Notice was no longer in effect because the tenants have already paid the amount demanded in the Ten-Day Notice. Accordingly, the tenants withdrew their application to cancel the Ten-Day Notice.

Severance of Unrelated Claims

Residential Tenancy Branch Rules of Procedure, number 2.3 states that:

“2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.”

The main claim raised by the tenants in this application for dispute resolution is a claim for monetary compensation for loss of quiet enjoyment of the rental unit. It is my determination that this claim is not sufficiently related to any of the tenants’ other claims contesting rent increases and requesting an order for the landlord to comply with the *Act* to warrant that they be heard together.

The tenants’ other claims are unrelated in that they do not pertain to facts relevant to the grounds for claim for monetary compensation for loss of quiet enjoyment of the rental unit. I exercise my discretion to dismiss all the tenants’ claims with leave to reapply except for the claim for monetary compensation for loss of quiet enjoyment of the rental unit and recovery of the filing fee for this application.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67?

Are the tenants entitled to recover their filing fee for this application from the landlords pursuant to section 72?

Background and Evidence

The parties agreed that the tenancy started on May 15, 2016. The monthly rent was \$900.00 per month and the tenants paid a security deposit of \$450.00. The landlords provided a copy of the tenancy agreement.

The parties agreed that the rental unit was located in a basement suite in the landlords' house. The landlords resided upstairs in the house. There is a second basement rental unit in the house neighbouring the tenants' rental unit.

The tenants testified that the landlords have been constantly making loud noises above them throughout the duration of the tenancy. The tenants complained that the noise frequently goes to 11:00 p.m. or midnight. The tenants complained that the noise is so loud that it is difficult to even watch television in the rental unit.

The tenants testified that the noise consisted of loud screaming and yelling by children. The tenants also complained that there are loud stomping and jumping sounds. The tenants also complained the landlords' children played sports in the house, including dribbling basketballs, which caused loud noises in the rental unit.

The tenants also complained that the landlords hosted large parties which made excessive noise late into the evenings.

The tenants submitted numerous video files to demonstrate the landlords' noise.

The tenants admitted that the tenant in the neighbouring rental unit was not disturbed by noise from the landlords.

The landlords testified that they do not generate much noise. They testified that the house is 28 years old with limited insulation so some noise is unavoidable. However, they testified that there is not much noise from upstairs.

The landlords testified that they have gone downstairs to the rental unit and the garage to listen for noise when the tenants complained, but they did not hear noise.

The landlords testified that the tenants' complaints were exaggerated. They testified that they were not even home some of the times that the tenants complained of noise.

Analysis

Section 28 of the *Act* provides that tenants are entitled to quiet enjoyment including the right to freedom from unreasonable disturbance.

Residential Tenancy Branch Policy Guidelines No. 6 discusses the right to compensation for breaching the entitlement to quiet enjoyment:

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 *Act*. 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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenants to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Based upon the testimony of the parties and the evidence submitted, I find that the tenants have not submitted satisfactory evidence to establish that the landlords have breached the tenants' entitlement to quiet enjoyment of the rental unit.

I am satisfied that the tenants have been disturbed by noise from the landlords. However, section 28 of the *Act* requires that this disturbance be unreasonable. I do not find that the tenants have proven that the noise disturbances in the rental unit are unreasonable. The video files submitted by the tenants do not exhibit excessive loud noise. In addition, the neighbouring tenant who also resides in the basement is not disturbed by the landlords' noise.

The entitlement to quiet enjoyment does not guarantee a tenant the right to silence in their rental unit. Some noise is unavoidable in a multi-unit dwelling, especially with children living upstairs and in a house of this character. In this matter, I find that the tenants have not provided satisfactory evidence to establish that this disturbance is unreasonable.

Accordingly, I dismiss the tenants' application for compensation for breach of their entitlement to quiet enjoyment.

Since the tenants have not prevailed in this matter, I deny their request for reimbursement of their filing fee.

Conclusion

I dismiss the tenants' claims for monetary compensation for loss of quiet enjoyment of the rental unit and recovery of the filing fee for this application without leave to reapply.

I dismiss all the remaining tenants' claims with leave to reapply except for the claim for monetary compensation for loss of quiet enjoyment of the rental unit and recovery of the filing fee for this application.

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: February 12, 2019

Residential Tenancy Branch