



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAPLE HOME PROPERTIES MANAGEMENT SOLUTIONS
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNDCT, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on November 25, 2019 (the "Application"). The Tenants applied for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement, compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenants appeared at the hearing. The Agent for the Landlord appeared at the hearing with J.G. and A.G. as representatives. I explained the hearing process to the parties who did not have questions when asked. The Tenants and Agent provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and Tenants' evidence and J.G. confirmed receipt of both.

During the hearing, the parties agreed the rental unit had been sold and therefore the Landlord was no longer the landlord. Given this, I advised the parties I would not consider the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement as such an order cannot be issued against a prior landlord. This request is dismissed without leave to re-apply.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties and all documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants sought \$35,000.00 for loss of quiet enjoyment during the period the Landlord was the landlord in this matter.

The parties agreed the rental unit was sold and a new owner became the landlord at the end of October.

The parties agreed on the following. There was a written tenancy agreement between the parties in relation to the rental unit. The tenancy started August 01, 2019 and was for a fixed term ending July 31, 2020. Rent was \$3,600.00 per month due on the first day of each month.

The Tenants' claim is mainly based on a loss of quiet enjoyment as a result of a neighbour. The Tenants testified that the neighbour assaulted them, harassed them, played loud music with inappropriate lyrics, slung marbles at them and yelled at them.

The Tenants also raised an issue about the stairs and porch not being properly attached and the fireplace not working; however, the Tenants did not elaborate on these issues during the hearing.

In relation to the neighbour issue, the Tenants provided the following testimony and submissions.

The Landlord knew they had children and were going to use the rental unit for a daycare. The Landlord failed to let them know the neighbour was an issue. The Landlord told them she did not want to warn them about the neighbour because she hoped the police might do something about the neighbour if children were living in the rental unit. The Landlord failed to protect their family and daycare from the neighbour. They asked the Landlord to lower the rent or install security cameras given the issues with the neighbour, but the Landlord did not. They begged the Landlord to help them with the neighbour.

The Landlord is supposed to protect their privacy, security and quiet enjoyment. They would not have rented the unit if they knew about the situation with the neighbour. The

Landlord's actions in relation to the neighbour impacted them emotionally and financially. They cannot use their back deck or backyard because of the neighbour. They lost a daycare client due to the actions of the neighbour. They contacted the Landlord about the issues with the neighbour and the Landlord did not respond.

The Tenants confirmed the neighbour lives in a separate house on a separate property and has no landlord-tenant relationship with the Landlord.

I asked the Tenants to outline their position about what the Landlord failed to do to protect their right to quiet enjoyment. The Tenants testified that the Landlord failed to advise them that the neighbour was an issue prior to them renting the unit, failed to set up a camera system and failed to go to the police with the Tenants.

J.G. made the following submissions on behalf of the Landlord. The Landlord hired the company he works for August 23, 2019 to assist with this situation. The Landlord advised the company of complaints from the Tenants about the neighbour. The company reached out to the Tenants and other neighbours; however, the Tenants refused to provide a statement about the issue and said they would handle it their own way. The company reached out to the police; however, the police would not act on what they said and advised that the Tenants needed to reach out to police themselves. It was the Tenants' responsibility to phone police when issues arose with the neighbour.

J.G. pointed out the following. The Tenants' statement refers to another neighbour having a camera and it not being effective in relation to the issues with the neighbour. There is nothing in the Tenants' statement about losing a daycare client. There is nothing about the back step or fireplace issue in the materials.

The Agent testified as follows. Another neighbour had a security system up. She did not proceed with a security system for the rental unit because she was told it would not be sufficient evidence. She hired J.G.'s company to deal with the situation.

The Agent agreed the outline of texts provided by the Tenants is accurate. The Agent disputed the written submissions of the Tenants and the Tenants' testimony at the hearing.

In reply, the Tenants testified that they made police reports in relation to the neighbour and were told the neighbour could be charged criminally if there was video evidence of

the issues. The Tenants indicated they did not want to deal with J.G.'s company because they felt it was a conflict of interest.

The Tenants submitted documentary evidence and written submissions. I have reviewed all of the documentary evidence and written submissions. I note the following from these.

The Tenants submitted a letter dated May 24, 2019 sent by the Agent to bylaw offices in relation to ongoing issues with the neighbour.

The written submissions outline issues with the neighbour including verbal assaults, the neighbour taking photos of the Tenants and their family and the neighbour calling police on the Tenants. They outline discussions between the Tenants and Agent about installing a security camera. They state that the Tenants asked the Landlord to reduce the rent so that they could install a security camera.

The parties corresponded by text and email in relation to the issues with the neighbour and how to address these. The Landlord advised the Tenants August 30, 2019 that they hired J.G.'s company to assist with the neighbour issue.

Analysis

Section 7 of the *Residential Tenancy Act* (the "Act") states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenants as applicants who have the onus to prove the claim.

The Tenants relied on section 28 of the *Act* which states:

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...

Policy Guideline 6 deals with the right to quiet enjoyment and states 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.

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...

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.

[emphasis added]

I note that the Tenants did not elaborate on the stairs and porch or fireplace issues. Nor did they submit documentary evidence about these issues. In the absence of further evidence on these points, I do not find them to be a basis for the compensation sought and have not considered them further.

The issue here is the behaviour of the neighbour. I find based on the testimony and documentary evidence that it is the neighbour who is disturbing the Tenants, it was not the Landlord or Agent who was causing the disturbance. I find the issue to be whether the Landlord is responsible for the disturbance.

Having considered the testimony and documentary evidence, I am not satisfied the Tenants have proven they are entitled to the compensation sought for the following reasons.

The neighbour was not a tenant of the Landlord. The steps the Landlord could reasonably have taken to address the issues with the neighbour are therefore limited.

I am satisfied based on the testimony of J.G. and the Agent, as well as the email correspondence, that the Landlord hired J.G.'s company to assist with the neighbour issue. Therefore, I find the Landlord did take some steps to address the issue. I note that the evidence shows this occurred at the end of August, within one month of the Tenants moving into the rental unit.

I am not satisfied the Landlord was required to install a security system to fulfil their obligation to protect the Tenants' right to quiet enjoyment. I am not satisfied based on the testimony or documentary evidence that installing security cameras would have addressed the issues with the neighbour, particularly given the Tenants' comments in their written submissions about such cameras not previously working in relation to the neighbour. I am not satisfied a sufficient connection has been shown between installing security cameras and addressing the issues with the neighbour.

In relation to the Landlord going to police with the Tenants, I am not satisfied based on the testimony or documentary evidence that the Landlord was required to do this. I do not understand this to be a situation where the police had to receive complaints from the Landlord rather than the Tenants. It was not made clear to me why the Tenants could not go to the police on their own. Further, the Tenants testified and stated in their written submissions that they did call police about the neighbour.

In relation to the Tenants' position that the Landlord should have disclosed the issues with the neighbour prior to entering the tenancy agreement, it may be that the Landlord should have done so.

However, the issue here is whether the Tenants are entitled to compensation. The Tenants have sought \$35,000.00 in compensation. This was in part based on the Tenants losing a daycare client. I did not understand the Agent or the representatives for the Landlord to agree or acknowledge that this occurred and J.D. pointed out that this was not mentioned in the Tenants' materials. This is the Tenants' application and their onus to prove. The Tenants have not submitted documentary evidence or evidence from a witness to support their verbal testimony on this point. In the absence of further evidence, I am not satisfied the Tenants have proven they are entitled to compensation for losing a daycare client.

Further, I find the Tenants could have taken further steps to mitigate their loss by cooperating with J.G.'s company when they were advised the company was hired to assist with the situation. Based on the emails submitted, I accept this occurred August 30, 2019, one month after the tenancy began. I do not accept that there was a conflict of interest such that the Tenants could not cooperate with the company. It was the Tenants' responsibility to mitigate their loss and I accept that this included working with the Landlord to find a solution.

Further, there was no issue that the Landlord ceased to be the landlord at the end of October as the parties agreed on this. This tenancy began August 01, 2019. The Landlord was the landlord responsible for this tenancy for three months. The Tenants' claim works out to be for more than \$11,000.00 per month over three months. This is more than three times the monthly rent. This amount is not reasonable, particularly given the Tenants had some use of the rental unit. Even if I found the Landlord breached section 28 of the Act, I would not have awarded the Tenants the compensation sought in the circumstances.

The Tenants have failed to prove they are entitled to the compensation sought. Given the Tenants were not successful, I decline to award them reimbursement for the filing fee. I dismiss the Application without leave to re-apply.

Conclusion

The Tenants have failed to prove they are entitled to the compensation sought. I dismiss the Application without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 05, 2019

Residential Tenancy Branch