Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT MNSD

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

All parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

I informed the parties of section 38 requiring the doubling of the security deposit if not returned by the landlord within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

Issue(s) to be Decided

Are the tenants entitled to:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

Throughout the hearing, the landlord was loud, strident, unrelenting and uncompromising. The Arbitrator warned the landlord several times about yelling and interrupting the Arbitrator and the tenants, behaviour which was loudly denied by the landlord. The landlord cast aspersions throughout the hearing on the veracity of the tenants' testimony and on their religion. The Arbitrator informed the landlord that the comments were reprehensible and were not to be repeated. The landlord's conduct continued throughout the 90-minute hearing.

The parties agreed the month-to-month tenancy began on May 1, 2018 for monthly rent of $1,350.00 payable on the first of the month. At the beginning of the tenancy, the tenants paid a security deposit and pet deposit of $1,350.00 (together referred to as "the security deposit") which the landlord holds. The tenants have not provided permission to the landlord to retain the security deposit.

The unit is a basement suite and the landlord lives above with her family.

A copy of the tenancy agreement was submitted as evidence. The tenants testified they were a couple with a young child when they entered into the tenancy agreement.

The tenants request compensation for loss of quiet enjoyment and reimbursement of other expenses. They also claim return of double the security deposit.

The landlord denied that the tenants are entitled to loss of quiet enjoyment. She claimed that she was willing to return the security deposit to the tenants at the end of the tenancy, but they refused or failed to show up for scheduled inspections.

The parties had sharply divergent views of what took place during the tenancy with respect to sounds coming from the landlord's home which the tenants claimed caused a loss of quiet enjoyment of their unit and which the landlord asserted was normal sounds of family living. Key aspects of their respective views are summarized below.

The tenants provided affirmed testimony as follows:

- The landlord and her family were noisy and frequently disturbed the tenants and their baby with loud voices and radio/TV audible to them in the unit;
- After about two months' occupancy, the tenants began sending texts to the landlord from time to time to ask if the landlord could please keep the noise down; the tenants only contacted the landlord if the noise was so loud the baby could not sleep or was awakened;
- The tenants submitted many recordings of the noise which they stated were representative of yelling, laughing, screaming and loud media sounds emanating from the landlord's unit;
- The tenants stated that sometimes the radio/TV was left on at a loud volume ("blaring") for 12 hours a day when no one was in the landlord's home;
- The tenants stated that the volume was so loud that "sometimes the basement was shaking" and sometimes they could not hear their own TV;
- On May 3, 2019, the landlord came to the unit and said that "maybe they [tenants] were not a good fit" and suggested they move out;
- The tenants were extremely distressed by the landlord's suggestion as the female tenant was experiencing serious medical issues and the noise was upsetting to their infant;
- The tenant sent a letter to the landlord dated May 10, 2019, a copy of which was submitted, in which the tenants requested lower noise for their ability to have quiet enjoyment of the unit;
- On May 22, 2019, the tenants sent a second letter to the landlord requesting lower noise especially after 10:30 PM and referred to recent loud noise at night;
- On May 31, 2019 the male tenant took a day off work which he stated was caused by the stress of living in the unit and for which he requested compensation from the landlord; a copy of a confirming letter from the male tenant's employer was submitted as evidence as well as evidence of lost wages;
- On June 11, 2019, the tenants sent the landlord a letter citing the quiet enjoyment sections of the Act, claiming the landlord was yelling at them causing them to feel harassed and threatened; the tenants requested the noise level be lowered;
- On June 21, 2019, the landlord informed the tenants that 9 days earlier her foster-child observed the male tenant looking through a window of the landlord's home where the child was alone;
- The tenants were shocked and horrified by the landlord's perceived allegation that the male tenant was a "peeping tom" and they vigorously denied the suggestion both to the landlord (a copy of the letter being submitted as evidence) and at the hearing;
- The tenants described the landlord throughout the tenancy as bullying,

aggressive and threatening and the unwarranted allegation was a new level of behaviour they perceived as abusive;

- The tenants believed that the landlord's accusation was made to "escalate the situation", that is, to force the tenants to vacate; the tenants said they became afraid of the landlord and believed it was "no longer safe" to live in the unit, believing that the campaign of behaviour against them would persist until they moved out;
- On June 25, 2019 the tenants decided they could not take the situation any longer; they submitted a letter to the landlord, a copy of which was entered as evidence, stating they planned to move out by the end of July 2019;
- The letter stated in part:
    - *…it's no longer feasible for us to live and raise a child here under the circumstances. The noise levels continue to be an issue despite repeated requests for quiet enjoyment. Even when no one is home upstairs, we are subjected to music and television blaring at unreasonable levels all day – up to 12-hours long some days.*

    - *We have let you know this hampers our child's ability to take naps and sleep in the evenings, but our rights as tenants continue to be blatantly disregarded.*

    - *Now your recent allegations that [male tenant] was "peering" into your windows like some kind of peeping-Tom pervert are not only offensive, but are defamatory, disgusting, and baseless….*

    - *We've realized that as you do not have legal and just cause to evict us, you will harass us using whatever means you can to get us to move, so this is no longer a safe or healthy environment ofr our family to be in.*
    - [forwarding address included]

- On June 24, 2019, the tenants made a noise complaint to the police regarding the landlord, a copy of which was submitted as evidence;
- As stated, the tenants provided their forwarding address in the letter of June 24, 2019;
- The tenants paid rent for June and July 2019;
- The tenants vacated on July 7, 2019 because they stated they could not stand the noise, they were stressed out, and they found another place to stay and returned only to clean;
- The tenants returned the keys July 24, 2019;

- The landlord left on vacation at the end of July 2019 and appointed an agent to act on her behalf;
- The landlord sent the tenants a letter by regular mail postmarked July 23, 2019 providing 3 times for the proposed inspection of the unit and providing the contact information for the agent;
- The landlord returned the security deposit to the tenants by cheque but put a stop payment on the cheque;
- The tenants received the letter on the third proposed inspection date, July 29;
- The tenants phoned the agent at 4:32 PM on July 29, 2019 and left a message stating that they received the letter too late to attend the final proposed date and asking that they agent call them;
- The agent did not call the tenants back;
- On August 1, 2019, the tenants affixed a letter to the landlord's door, a copy of which was submitted, inviting a selection of new dates for the proposed inspection;
- The agreement promised the tenants a dishwasher which was never provided.

The landlord vociferously disagreed with most of the tenants' testimony and submitted a 20-page written argument with many attached documents. Some of the key evidence follows:

- The noise generated in the landlord's household was normal, "everyday, regular noise";
- The vents between the units were connecting noise so there was nothing the landlord could do about the normal, family sounds;
- The landlord has a family which included teenagers and the sounds of family life were ordinary and commonplace for the circumstances;
- The landlord warned the tenants that "this was an active household" and the unit "is not soundproofed".
- The landlord acknowledged that the evidence submitted by the tenants in audio format accurately reflected the sound in the landlord's home, but that the incidents were rare and only when there were sports events saying, "we're a sports family"; the landlord also stated in her written submissions, "… intermittent celebrations are "regular sounds of living" and demonstrates the Tenants intolerance";
- Some of the tenants' evidence was "forged and falsified".
- The tenants were "always interrupting" the landlord's normal family life with their complaints;
- The tenants often complained they were cold and asked the landlord, who

controlled the thermostat, to raise the temperature, thereby harassing the landlord;

- It was unreasonable that the tenants would want quiet for their baby to sleep at 7:00 PM in the evening;
- The tenants were always polite and respectful in their communication, and the landlord asserted that she was the same;
- The landlord asserted that she was informed by her foster-child on June 12, 2019 that the male tenant looked in the living room window, a copy of a letter from the foster-child having been filed as evidence;
- the landlord acknowledged sending a letter on June 21, 2019 to the tenants about the incident writing it was “a warning”;
- The landlord stated that in her written submissions: “The primary responsibility of a Foster Parent working solely with venerable [sic] youth that has experienced serious challenges included sexual assault is safety. It was a great concern and part of the ongoing harassment the Landlord and family had experienced from the tenants.”
- During the hearing, the landlord acknowledged that the male tenant may just have been looking into the living room through the window while going by with no other agenda such as sexual assault; the landlord acknowledged she made no complaint to authorities;
- The landlord enumerated many difficulties with the tenants including their turning off electricity, unreasonable requests to park their car in certain locations, and changing keys;
- The tenants were “self-serving and offensive”;
- On December 16, 2019, the landlord filed an application for damages caused by the tenants scheduled for hearing on May 5, 2019, reference to the file number appearing on the first page;
- The landlord put a stop payment on the cheque returning the security deposit to the tenants because the walk through had not taken place;
- The landlord was always willing to return the security deposit as soon as the condition inspection took place;
- The provision of a dishwasher in the agreement was an error, none was ever promised, and the tenants are not entitled to any compensation for failure of the landlord to provide a dishwasher.

The tenants requested a return of their security deposit (2 x $1,350.00) and compensation for loss of quiet enjoyment in the amount of $1,350.00, being one month’s rent. They also requested reimbursement for one day of lost wages for the male tenant in the amount of $255.60, reimbursement of moving costs of $55.48, loss of

use of dishwasher promised by the landlord in the tenancy agreement of $72.37.

The following is a summary of the tenants' claims:

ITEM	AMOUNT
Security deposit	$1,350.00
Security deposit – doubled	$1,350.00
Loss of quiet enjoyment	$1,350.00
Lost wages	$255.60
Loss of use of dishwasher	$72.37
Moving expenses	$55.48
TOTAL CLAIM	**$4,433.45**

As the scheduling of the inspection is an issue, a brief summary of the key events in the timeline follows:

- A condition inspection on moving in took place.
- The tenancy was scheduled to end July 31, 2019 and the tenants had paid rent for the month of July; the tenants returned the keys on July 24, 2019 and had moved out by that time;
- By letter dated July 22, 2019 and post marked July 23, 2019 the landlord appointed an agent to arrange a condition inspection with the tenants;
    - The landlord included with the letter a cheque to the tenants returning the security deposit in full; when the tenants deposited the cheque, they learned there was a stop payment on it;
    - The letter listed 3 proposed inspection times the last time being July 29, 2019, the date the tenants received the letter;
- The tenants called the agent at 4:36 PM on July 29, 2019 and submitted evidence of having made the call, leaving a message for the agent to call; the agent never returned the tenants' call;
- The landlord denied the tenants called the agent to arrange an alternative time;
- On August 1, 2019, the tenants posted a letter to the landlord's door stating that two of the dates had passed while the letter was in transit and that they were unable to attend on July 29, 2019, the date of receipt; they wrote, "We are available and happy to do the final walk-through; please ensure sufficient time is given for us to receive the proposed time if sending by regular mail."
- On August 26, 2019, the landlord proposed two times/dates for the inspection on September 5 and 6, 2019;

- The tenants stated that so much time had elapsed since they moved out that they could not see the point of attending an inspection;
- The landlord did not submit a Notice of Final Inspection in the RTB form;
- No condition inspection on moving out took place.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the parties' submissions and arguments are reproduced here in a hearing which lasted 90 minutes. The relevant and important aspects of the claims and my findings are set out below.

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 tenant 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.

Tenant's claim: loss of quiet enjoyment

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment. The section states as follows:

> 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;*

> (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.*

The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment states as follows:

> *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 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).*
>
> (*emphasis a*dde*d*)

I acknowledge that the landlord disagreed with the tenants' version of events and asserted that the sound from her home was of a normal volume for a family. The landlord denied the tenants had any reasonable cause to complain.

I do not find the landlord's submissions to be persuasive. I find the landlord's suggestion that the tenants are being untruthful or are exaggerating to be unsupported by the evidence. I do not find the landlord credible.

I find the tenants were believable, calm and forthright in their testimony which was supported by considerable evidence including many letters to the landlord. These letters clearly and concisely set out the problems they experienced with the noise from the

landlord's home and their patient, repeated efforts to resolve the situation. I accordingly give more weight to the tenants' testimony.

I find the tenants were genuinely and severely disturbed by the landlord's repeated noise and the landlord's insensitivity to the tenants' reasonable requests for a lower volume. I accept the tenants' description of the noise as being sometimes "unbearable" and their futile efforts to persuade the landlord to keep the sound down.

I find the issuance of the "warning" from the landlord about the alleged "peeping tom" behavior of the male tenant to be especially bullying and egregious.

In considering the evidence, I find the landlord's version of this event to be fabricated or exaggerated solely for the purpose of putting pressure on the tenants to leave the unit. I find the landlord callously issued this "warning" without any factual basis and without any consideration of the impact of such an unfounded accusation on the tenants of serious wrongdoing. The landlord minimized and dismissed the repercussions on the tenants of an unsupported allegation of this nature.

I find the landlord created a stressful tenancy which had an increasingly traumatic and negative impact on the tenants who concluded they had to vacate the unit as quickly as possible.

In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

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.

Based on the weight I have given to the parties' evidence, I find the tenants have met the burden of proof on a balance of probabilities for a claim for compensation for loss of quiet enjoyment.

In considering the testimony of the parties and the evidence, I find it reasonable to reimburse the tenants for one month's rent in the amount of $1,350.00. Accordingly, I award the tenants a monetary order in this amount for this aspect of their claim.

Tenant's claim for lost wages

I accept the tenancy was extremely difficult for the tenants. For the reasons set out above, and which will not be repeated here, I find it reasonable that the male tenant would miss one day of work in the tenancy as a result of the unreasonable and egregious behavior of the landlord.

The male tenant submitted evidence of lost wages for one day in the amount of $255.60. I find this loss was due to the breach of the landlord's obligation to provide the tenants with quiet enjoyment of their unit.

I find the tenants have met the burden of proof on a balance of probabilities that the lost wages resulted from the landlord's breach of a term of the tenancy agreement and I grant the tenants a monetary award in this amount.

Security deposit

Section 38 of the Act deals with the rights and obligations of landlords and tenants regarding the return of the security deposit.

Section 38(1) states that within 15 days of the end of the tenancy and receiving the forwarding address, a landlord must either: repay any security deposit to the tenant or make an application for dispute resolution claiming against the security deposit.

I find that the landlord was in possession of the tenants' security deposit held in trust on behalf of the tenants at the time the tenancy ended. I find that the tenancy ended on July 31, 2019 and the tenants' provided a forwarding address to the landlord on June 24, 2019 when they provided their notice to vacate. To comply with the Act, the landlord must either have returned the deposit or made an application for dispute resolution seeking to keep the deposit within the following 15 days after July 31, 2019. I find that this was not done and therefore a violation of the Act occurred.

Section 38(6) provides that if a landlord does not act within the above deadline, the landlord:

(a) May not make a claim against the security deposit or any pet damage deposit, and;
(b) Must pay the tenant double the amount of the security deposit.

Regarding the move-out inspection, section 35 states that the landlord must offer the

tenant at least 2 opportunities, as prescribed, for the inspection. The Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both the landlord and the tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations. Past 3 of the Regulations goes into significant detail about the specific obligations regarding how and when the condition inspection reports must be conducted.

The Act states that the landlord must make the inspection and complete and sign the report without the tenant if:

(a) The landlord has complied with subsection (3); and
(b) The tenant does not participate on either occasion.

Section 35 states:

> ***Condition inspection: end of tenancy***
>
> ***35*** *(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*
> *(a) on or after the day the tenant ceases to occupy the rental unit, or*
> *(b) on another mutually agreed day.*
> *(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
> *(3) The landlord must complete a condition inspection report in accordance with the regulations.*
> *(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
> *(5) The landlord may make the inspection and complete and sign the report without the tenant if*
> *(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or*
> *(b) the tenant has abandoned the rental unit.*

The landlord stated that the tenants did not cooperate with the scheduling of inspections and therefore the tenants' right to the return of the security deposit is extinguished under section 36(1).

The Act has provisions that anticipate such situations. The condition inspection report must be done with both parties present as soon as the unit has been vacated as required by the Act. Failing that, the landlord can complete the inspection in the absence of the tenant by following all the required steps and must be prepared to prove that this was done.

Section 17 of the Regulations details how the inspection must be arranged as follows:

> ***Two opportunities for inspection***
> ***17****(1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*
> *(2) If the tenant is not available at a time offered under subsection (1),*
> *(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and*
> *(b) the landlord* ***must*** *propose a second opportunity, different from the opportunity described in subsection (1), to the tenant* ***by providing the tenant with a notice in the approved form****.*
> *(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.*

I find the practice followed by this landlord relating to the condition inspection was not in compliance with the Act in several respects. The landlord did not provide the tenants a first opportunity after the end of the tenancy on July 31, 2019. The landlords proposed dates in the letter of July 21, 2019 all of which preceded the end of the tenancy. In any event, the landlord was required under section 17(2)(b) to propose a second opportunity "by providing the tenant with a notice in the approved form". The landlord acknowledged she never provided the tenants with a notice in the approved RTB form. Therefore, the landlord's subsequent effort weeks later to set an inspection in early September 2019 are not in compliance with the Act.

Therefore, I find that the landlord cannot reply on section 36(1) to establish that the tenants had extinguished their right to claim the deposit by refusing to cooperate with the move-out inspection.

Under section 38(6) of the Act, I find that the tenants are is entitled to receive double the security deposit retained by the landlord.

Tenants' claim: moving expenses

The tenants claim reimbursement of moving expenses in vacating the unit of $55.48. The tenants provided notice to the landlord they were leaving.

It is the tenants' obligation to vacate the unit according to their notice. Accordingly, I find the tenants' claim for reimbursement of moving expenses does not meet the burden of proof required and I dismiss the tenants' claim in this regard without leave to reapply.

Dishwasher

I find the tenants have not met the burden of proof on a balance of probabilities that a dishwasher was intended to be included in the tenancy and find that the inclusion in the agreement is not definitive in this regard.

I therefore deny the tenants their claim for reimbursement under this heading.

Filing fee

As the tenants have been mostly successful in their claim, I grant the tenants reimbursement of the filing fee of $100.00.

Summary

In summary, I grant the tenants a monetary order as follows:

ITEM	AMOUNT
Security deposit	$1,350.00
Security deposit - doubled	$1,350.00
Loss of quiet enjoyment	$1,350.00
Lost wages	$255.60
Reimbursement filing fee	$100.00
MONETARY ORDER	**$4,405.60**

Conclusion

I order the landlord pay to the tenants the sum of **$4,405.60.** I grant the tenants a monetary order in this amount.

The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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 07, 2020

Residential Tenancy Branch