



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, MNDCT, OLC, FFT

Introduction

The tenants apply for a rent reduction, a monetary award commensurate with a retroactive rent reduction plus some expenses, and for a compliance order and recovery of the filing fee.

The respondent landlord did not attend for the hearing within 60 minutes after its scheduled start time at 11:00 a.m. on August 17, 2020. The teleconference hearing connection remained open during that time in order to enable the parties to call into the teleconference hearing. The call-in numbers and participant codes provided in the Notice of Hearing were confirmed as correct. The teleconference system audio console confirmed that the tenants and this arbitrator were the only ones who had called into this teleconference during that period.

The landlord lives on the mainland. The tenancy agreement he presented and signed at the start of this tenancy fails to give any address for him. When it came time for the tenants to serve this application, Mr. B. testifies that he contacted the landlord and was given what appears to be a post box number in Whistler. The tenants sent the application by registered mail to that address (tracking number shown on cover page of this decision). Canada Post records show the mail was delivered on July 28, 2020.

Mr. B. further testifies that when the tenants later contacted the landlord about moving out and giving written notice, the landlord confirmed he had received the application.

On this evidence I find that the landlord has been duly served with the application.

The nature of the tenants' claim involves a reduction in the area of the yard and their ongoing interaction with the tenant living below them.

Issue(s) to be Decided

Has the landlord failed in his duty to provide the tenants with freedom from unreasonable disturbance as required by s. 28(b) of the *Residential Tenancy Act* (the “RTA”)? Is he responsible for the expenses claimed?

Background and Evidence

The rental unit is the three-bedroom upper portion of a house. There is a written tenancy agreement. The tenancy started in April 2019. The monthly rent is \$1800.00, due on the first of each month. The landlord holds a \$900.00 security deposit.

The tenants have given notice to end their tenancy effective the end of August 2020.

The tenants, through their testimony and documentation describe the fencing-off of a portion of the yard assigned to them and an escalating conflict with Ms. JG, a single person living in the one-bedroom basement suite below.

The tenants’ “Monetary request worksheet” filed in this matter was used by them as a guide in their testimony. Of note, there was no testimony about the “significant disturbances” from any realtors, as alleged in that document.

In July 2019 the landlord replaced a wire fence delineating the area of the yard reserved for their exclusive use from that of the tenant JG. The new fence was in a different locations and as a result their yard size was reduced about 100 square feet. They have two young children and two large dogs, all of whom would have benefitted from having that area included in the yard. The tenants had plans to garden there as well.

The evidence shows that starting in October 2019, during a period where Mr. B. was confined at home all day for about eight weeks recovering from surgery, he was frequently disturbed by JG’s playing of loud, bass heavy music and loud outdoor tools.

For the next six months the disturbances continued. The tenants called the landlord “many times” about the noise but nothing was done. The mother of one of the tenants found she could not sleep there because of the noise. The tenants wouldn’t have overnight guests because of the noise nor invite children’s friends. JG became belligerent in her attitude to the tenants. She turned off connection to the internet (of

note, the tenancy agreement did not provide the applicant tenants with an internet connection).

In March 2020 the oven portion of the tenants' oven ceased to function. The landlord was informed but failed to rectify the problem until late May. The tenants testify they had been using the oven frequently for bread making, casseroles, pizza and baking potatoes for their kids.

In April 2020 the disturbance increased significantly. On April 8 or 9 JG had party into the early hours of the morning despite the protests from the tenants above. On April 16 the tenants wrote to the landlord listing the problems they were experiencing with JG and asking for him to do something. Contrary to their wishes he simply gave JG a copy of the letter. He took no steps to investigate the tenants' complaints or to resolve the issues.

By this time the tenants were calling the RCMP about JG. She was threatening the tenants and continuing to disturb them with her noise. In June when the tenants complained once again to the landlord he told them that JG was free to do whatever she wanted.

The tenants indicate that in July 2020 matters intensified even more. JG was repeatedly "blasting" music up at them in their rental unit. She would yell at the tenants from the yard. She informed them that from 7:00 a.m. to 10:00 p.m. she could do what she liked. As a result the tenants acquired a travel trailer for their children to sleep in.

Because of JG's attitude and threats the tenants rented a storage locker to keep their valuables safe.

Their neighbours have told them they have reported JG to local bylaw enforcement because of the noise she creates.

Despite the tenants' repeated complaints to the landlord they say they are unaware of any investigation by him into the grounds of their complaints nor of any step or steps he might have taken to reduce the problem.

Analysis

A landlord is not directly responsible for the inter-tenant disputes that arise from time to time in living relationships such as this one. His obligation is to provide his tenants with

“quiet enjoyment” of their rental unit. In the *RTA*, that ancient common law term has been defined to include freedom from unreasonable disturbance. The landlord’s responsibility starts when there is a complaint. His duty is to investigate the complaint and if there is a reasonable basis to conclude the complaint has merit, then to take appropriate steps to ensure it is not repeated. Sometimes a mere discussion will raise tenant awareness and the problem is solved. Sometimes a warning letter is all that is required to bring home to a tenant the consequences of her actions and sometimes the threat of eviction or even an order of possession is needed to resolve a problem.

In this case there was none of that. The landlord took no steps to inquire into the nature or severity of the conduct the applicant tenants complained of. Indeed, it would appear he even asserted to JG a right she did not have, namely, to make as much noise as she pleased between 7:00 a.m. and 10:00 p.m.

The evidence satisfies me that the tenants have been significantly interfered with in the enjoyment of their rental unit and yard. I find that had the landlord taken reasonable steps to preserve their right to freedom from unreasonable disturbance then their use and enjoyment of the rental unit and yard would have been much greater than it was. Had he examined the contemporaneous recordings being made by these tenants or consulted a neighbouring resident who had also been disturbed by JG’s actions, acting reasonably he would have had JG stop her disturbing conduct or seen that JG was evicted.

Yard Area Reduction

The tenants have suffered what they calculate to be 100 square feet of useable yard space taken by the landlord’s alteration of the fencing location. I agree with their valuation of the loss at \$45.00 per month and I award them \$45.00 per month for the twelve months August 2019 to July 2020, a sum of \$540.00. Had the landlord attended the hearing I would have amended the tenants’ claim to include the month of August 2020 in the calculation of this award.

Loss of Oven

The oven portion of the oven in this rental unit was a significant benefit to these tenants. I accept their evidence that they made regular use of it. I consider it to be a loss separate from the loss of quiet enjoyment caused by JG and I award the tenants \$300.00 for the landlord’s failure to repair or replace the oven in a timely manner.

Loss of Quiet Enjoyment by Unreasonable Disturbance October 2019 to March 2020

I find that in addition to being a frequent disturbance, the actions of JG resulted in a significant limitation of the tenants' use and enjoyment of their rental unit by the tenants having to restrict guests and visitors.

I consider the tenants' estimate of a 6% reduction to be a reasonable one. That reduction should only start however, after a reasonable period that would have allowed a landlord acting reasonably to take steps to confirm the disturbance, take steps to abate it or have the offending tenant evicted. I set that time period at two months.

I award the tenants \$108.00 per month for four months December 2019 to March 2020, a total of \$432.00.

Loss of Quiet Enjoyment by Unreasonable Disturbance April to June 2020

The tenants' evidence satisfies me that the disturbance being caused by JG for these three months increased significantly. JG was having late night parties and was confronting these tenants with screams and name calling as well as threats to "ruin your lives." The tenants reported JG's behaviour to the police on three separate occasions. Their continuing complaints to the landlord were ignored.

In all the circumstances I consider a rent reduction of 50% to be appropriate in these circumstances and I award the tenants \$2700.00.

July 2020

It was in this month the tenants could no longer put their children to bed in the rental unit. JG was "blasting" music late into the evenings and was yelling at the tenants from the yard as well as sending harassing text messages. They spent more time away from their home. The tenants themselves joined their children to sleep in the travel trailer. JG began bringing numerous people to stay with her and they increased the commotion coming from her suite. The tenants were living in constant apprehension about what JG might do.

In all of these circumstances I consider a 75% reduction in rent to be appropriate and I award the tenants \$1350.00.

Had the landlord attended the hearing I would have amended the tenants' claim and awarded them this reduction for the month of August 2020, their last month of tenancy.

Storage Cost

It is the tenants undisputed evidence that because of the actions of JG they were obliged to rent and move their more valuable belongings to a storage facility. I award them the storage unit cost of \$281.45 and u-haul truck rental cost of \$200.00 for a total of \$481.45.

Conclusion

The tenants are entitled to a monetary award totalling \$5803.45 plus recovery of the \$100.00 filing fee for this application. They will have a monetary order against the landlord in the amount of \$5903.45.

As the tenants will be moving shortly, I decline to make a compliance order of any kind. It would serve them no purpose.

The tenants are at liberty to make another application covering the period August 2020, a period not dealt with at this hearing.

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: August 17, 2020

Residential Tenancy Branch