



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Burr Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDCT, FFT

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 compensation for their alleged loss of quiet enjoyment during this tenancy pursuant to sections 65 and 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Preliminary Matters –Service of Documents and Evidence

The tenant in attendance (the tenant) provided sworn testimony and written evidence that they served both landlords with copies of their dispute resolution hearing package by registered mail on November 28, 2020. Their Canada Post Tracking Number showed that Canada Post received this registered mail on November 30, 2020. While Landlord WM (the landlord) confirmed receipt of this information and the tenants' initial batch of evidence in early December 2020, their agent representing both the corporate landlord and the landlord (the agent) who has been managing this property for them, did not receive this information until February 3, 2021. They received this material and copies of the tenants' written and digital evidence as it existed at that time, when the tenant re-sent the dispute resolution hearing package and their evidence which had been returned to them by Canada Post as undelivered to the corporate landlord representing the landlord.

The tenant gave sworn testimony supported by written evidence that they erred in placing an incorrect mailing address on the copy of the original dispute resolution hearing package sent to the corporate landlord. Although the tenant was unable to identify the date when they re-sent the dispute resolution hearing package to the corporate landlord, they did not dispute the agent's assertion that the agent did not receive this material by registered mail until February 3, 2021.

The agent said that given the limited time that they had had between receiving the dispute resolution hearing package and the initial packages of written, audio and video evidence that they had not been able to review all of the material that the tenants had brought forward for consideration at this hearing. Nevertheless, the agent did provide some written evidence in response to the tenants' application on February 4, 2021, which the tenant confirmed they received the following day. The tenants entered additional late written and digital evidence on February 5, 2021. The agent confirmed receipt of this additional late evidence, but again had not had a full chance to review or consider all of it.

I note that copies of dispute resolution hearing packages are to be provided to all respondents identified in an application within 3 days of receiving them. Although some latitude is given with respect to this provision, such latitude does not normally extend to the provision of the application six days before a hearing scheduled over two months ago, as was the case with respect to this application.

I advised the parties that the tenants' failure to provide copies of their dispute resolution hearing package to the corporate landlord identified in their application in a timely fashion called into question the extent to which the landlords could obtain a fair hearing of their position with respect to the tenants' application. In addition, the Residential Tenancy Branch's Rules of Procedure require applicants to provide all of their evidence to all respondents as soon as possible and at least 14 days before a hearing. Respondents are also required to provide copies of their evidence to the applicants at least 7 days before a hearing.

I advised both parties that their provision of evidence to one another was not done in accordance with the time limits for doing so established by the Rules of Procedure.

Despite the considerable deficiencies outlined above with respect to the service of documents and evidence to one another, I offered the parties an opportunity to try to settle their dispute in accordance with section 63 of the *Act*.

Issues(s) to be Decided

Should any orders be issued against the landlords with respect to this tenancy? Are the tenants entitled to a monetary award for their loss of quiet enjoyment during this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This tenancy for a rental suite above one of the two townhouses in this rental complex owned by the landlord commenced on April 1, 2015. Current monthly rent is set at \$1,017.00, payable in advance on the first of each month.

Most of the tenants' dispute arose from the behaviours and activities of the tenants living in the townhouse below them. Some of these relate to noise that the tenants maintain emanates from those dwelling in the townhouse below them, both from inside the townhouse and in the yard that adjoins that townhouse, situated directly below the tenants' windows. The tenants asserted that the landlord has taken insufficient measures to address these concerns, despite having been notified of these concerns for over one year.

The tenants sought a monetary award of \$2,337.00, an amount that would give them retroactive compensation for their loss of quiet enjoyment. They arrived at this figure by requesting a 20% reduction in their monthly rent for a one-year period.

The landlord testified that they did act on the tenants' complaints in February 2020, when they issued the tenants residing in the townhouse below the tenants a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). The landlord said that there was a dispute resolution hearing scheduled for April 24, 2020 to consider their request for an end to the tenancy of the tenants living below the tenants, and the issuance of an Order of Possession. However, with the onset of the global coronavirus pandemic, both the tenants living in the lower level townhouse and the landlord understood that evictions were not allowed. Neither party attended the April 24, 2020 hearing, and the lower level tenants continued their tenancy.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings,

the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute. In so doing, the tenant confirmed that they had full authority to act on behalf of the tenant who did not attend this hearing:

Both parties agreed to the following final and binding resolution of their dispute:

1. The tenants committed to provide signed letters of complaint with respect to the behaviours and activities of the tenants living below them to the corporate landlord's agent in the event that those behaviours and activities disturb their quiet enjoyment of the tenants' rental unit.
2. The tenants committed to contact other tenants in this complex and provide the corporate landlord's agent with signed letters of complaint should other tenants in this complex be concerned about the behaviours and activities of the tenants living in the rental unit below the tenants.
3. The tenants committed to deal exclusively with the corporate landlord's agent with respect to all matters arising out of this tenancy.
4. The landlords committed to act promptly upon receipt of letters of complaint from the tenants and other tenants in this complex about the behaviours and activities of the tenants living below the tenants. Upon receipt of adequate evidence of behaviours and activities that could lead to ending the tenancy of the tenants living below the tenants, the landlords committed to issuing warning letters to the tenants living below the tenants. In the event that these warning letters go unheeded and do not lead to adequate corrective action, the landlords committed to issuing a One Month Notice to End Tenancy for Cause to the tenants living below the tenants.
5. The landlords agreed to allow the tenants to recover the \$100.00 filing fee for their application by permitting the tenants to reduce a future monthly rent payment by \$100.00.
6. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenants' application and all issues currently in dispute arising out of this tenancy and that they did so of their own free will and without any element of force or coercion having been applied.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I order the tenants to withhold \$100.00 from their next monthly rent payment as a means of compensating them for their filing fee for this application.

I also order the tenants to communicate directly with the agent with respect to any matters of concern arising out of this tenancy, and not with the landlord.

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 09, 2021

Residential Tenancy Branch