



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, RR, FFT

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony. This matter was originally scheduled to be heard on December 10, 2020 but due to technical issues, the matter was adjourned to today's date. At the original hearing both parties confirmed that the tenants moved out on November 30, 2020 and that the tenants now only seek a monetary order and the recovery of the filing fee for this hearing. The hearing proceeded and completed on that basis.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for loss or damage under the *Act*, regulation, or tenancy agreement?

Are the tenants entitled to the recovery of the filing fee for this application from the landlord?

Background and Evidence

The tenants gave the following testimony. DW testified that they moved into the suite on August 1, 2014 and moved out on November 30, 2020. The monthly rent at move out was \$1250.50 due on the first of each month. DW testified that they had water leak problems in the unit from the outset. DW testified that the landlord “pushed back” when he brought issues to her attention and would point out non-relevant problems with the suite. LW testified that the landlord was very aggressive and intimidating. LW testified that the landlord continually harassed them over non-issues; especially in the final ten months of their tenancy. The tenants testified that they filed this application for the following reasons as noted in their online application:

*Notice not served in good faith. My name incorrect, 'landlord' is not who I signed lease with, address is a PO box. Notice inaccurate and incomplete, one page unsigned and appears fraudulent, timing of service indicates notice served in retaliation for demanding right to quiet enjoyment, timely repairs, and due to unpaid rent during health emergency; **and***

Landlord has failed to provide us with quiet enjoyment. Numerous complaints of excessive noise, harassment and intimidation from other tenants have gone ignored or disputed by landlord who is a relative of said tenants. Asking for ½ rent credit for last 10 months rent.

The tenants testified that they incurred significant costs to move including ferry trips, gas, new lodging, cleaning, and meals. The tenants testified that the landlord continually harassed them throughout the tenancy. The tenants seek \$7500.00 for moving associated costs and \$6250.00 as compensation for the loss of quiet enjoyment.

The landlord’s agent gave the following testimony. The agent testified that the tenant’s issues were resolved and that this matter is only before the Branch because the landlord issued a notice to end the tenancy. The agent testified that the landlord disputes these claims as many of them are very dated. The agent testified that the tenants could have disputed the notice if they felt it was given in bad faith but chose to move. The agent submits that the tenants are motivated only by the possibility of a cash windfall and that this application should be dismissed.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties and considered all evidence, not all details of the respective submissions and

arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Moving Expenses \$7500.00

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenants testified that they were forced to move because of the landlord's inaction in dealing with the tenants upstairs and the unwillingness to conduct repairs. The tenants were unable to provide sufficient evidence to show that the landlord was negligent or reckless. In addition, the tenants waited until the end of their 6-year tenancy to act. The tenants did not mitigate the loss due to that delay.

I find that the tenants were unable to show that they were forced to vacate the rental unit, due to breach of a material term or as a result of the landlords' actions. The tenants filed this application to dispute a Two Month Notice to End Tenancy for Landlords Use of Property, but then chose to move out and not dispute that notice. The tenants have not satisfied the four elements as outlined above and I further find that the tenants moved on their own accord, accordingly; I dismiss this portion of their application.

Loss of Quiet Enjoyment \$6250.00

The tenants seek 50% of their rent returned over a ten-month period for February 2020 to November 2020 inclusive for the loss of quiet enjoyment due to the upstairs tenants. Section 28 of the *Act* deals with the right to quiet enjoyment (my emphasis added):

- 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.

Residential Tenancy Policy Guideline 6 “Entitlement to Quiet Enjoyment” states the following, in part (my emphasis added):

*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.*

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises.

While the tenants found the main floor occupants to be noisy and was bothered by their behaviour, these complaints were not necessarily subject to intervention by the landlord; specifically during COVID – 19 restrictions where the Provincial Health Officer ordered people to be home for extended periods of time. Residing in a multi-unit rental property sometimes leads to disputes between tenants. A certain level of noise is to be expected in a multi-unit house, given the location of the tenant’s unit directly below the other tenant’s unit and a higher level of tolerance during a pandemic. The occupants living above the tenants were entitled to quiet enjoyment of their unit, including completing activities of daily living and using the unit for different purposes. The tenants cannot decide how or when the occupants’ unit is to be used and for what purposes. The rights of both parties must be balanced.

When concerns are raised by one tenant, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required.

The landlord's agent testified that the tenants only filed this application in response to the notice to end tenancy. The agent testified that repairs have been done throughout the tenancy and that if the issues were so significant from the start of the tenancy, why did the tenants wait 6 ½ years to file an application. In the time that the tenants lived at the rental unit, they claim that had issues almost immediately after moving in. I see insufficient evidence to demonstrate that the landlords failed to take appropriate action to follow up on the tenant's complaints about the occupants living above them. I find that the noise referenced by the tenants was a temporary inconvenience and not an unreasonable disturbance, as noted in Policy Guideline 6, above.

Accordingly, I find that the tenants are not entitled to a loss of quiet enjoyment of \$6250.00.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: March 30, 2021

Residential Tenancy Branch