



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDCT

Introduction

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

- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67.

"Tenant RN" did not attend this hearing, which lasted approximately 49 minutes. The landlord's three agents, landlord CT ("landlord"), "landlord RH" and "landlord SG," and tenant LG ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's "witness AT" was excluded from the outset of the hearing. The landlord stated that he did not want to recall this witness to give testimony, when given the opportunity to do so. Therefore, witness AT did not testify at this hearing.

The landlord confirmed that he was the property manager for the landlord company named in this application and that he had permission to speak on its behalf. Landlord RH confirmed that he was the customer service coordinator and landlord SG confirmed that she was the property administrator, and that both had permission to represent the landlord company. Landlord SG did not testify at this hearing.

The tenant confirmed that she had permission to represent tenant RN, who is her daughter, named in this application (collectively "tenants").

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's evidence.

I explained the hearing and settlement process to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with this hearing and they wanted me to make a decision regarding this application.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the rental unit address. Both parties consented to this amendment during the hearing.

Issues to be Decided

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2019. Both parties signed a written tenancy agreement. Monthly rent in the current amount of \$1,360.00 is payable on the first day of each month. A security deposit of \$680.00 and a pet damage deposit of \$680.00 were paid by the tenants and the landlord continues to retain both deposits. The tenants continue to reside in the rental unit.

The tenants seek an order requiring the landlord to comply with section 28 of the *Act* regarding quiet enjoyment, and a monetary order of \$2,671.76.

The tenant testified regarding the following facts. The tenants want quiet enjoyment between 10:00 p.m. and 7:00 a.m. or 9:00 a.m. at the rental unit. The tenants provided letters from other tenants. There has been no quiet enjoyment since September 2020.

There is no communication from the landlord. The tenants want quiet enjoyment relief under sections 28(a) and (b) of the *Act*, regarding reasonable privacy and freedom from unreasonable disturbance. The landlord shows up sometimes with notice and sometimes without notice. The landlord knocks on the tenant's door, without notice, to do repairs. The tenant bought a video camera. The tenants have been unable to sleep. Four warnings were given against one unit. The tenants can smell marijuana and cigarette smoke. At one of the units, there is a lot of fighting, locking the daughter out, and her banging on the door. The tenants told the former landlord by email starting in September 2020, and warnings were given. In November 2020, the landlord company named in this application took over ownership for this rental property. The tenants sent emails and the landlord gave warnings. The police were called as recently as April 10, 2021 and talked to the other occupants. The tenants seek a monetary order for a loss of sleep, the cost of printing, ink cartridges, gas, doing hearing work, time working on this file, the post office, and running back and forth. The tenant only has police file numbers and the names of police officers, not police reports because she cannot get any, only the RTB can. There is a bylaw email, which the tenant could not find during the hearing. There are still ongoing issues with all three units, one regarding garbage and tents, the other regarding ongoing smoke, and the third regarding aggressive behaviour and staring.

The landlord testified regarding the following facts. The landlord disputes the tenants' entire application. Evidence 1 of the landlord's package relates to a noise complaint caution on October 15, 2020, for one occupant unit that the tenants complained about. The tenant was offered arbitration to deal with this issue with the other occupant, but the tenant refused. Evidence 2 of the landlord's package relates to an investigation of a noise complaint by the landlord on October 22, 2020, which was found to be acceptable noise, the landlord added weather stripping, and it seems to be a personal issue between the tenant and the other occupant. The landlord ownership changed in November 2020. Evidence 3 of the landlord's package relates to a noise warning that was given to one occupant unit that the tenants complained about. Evidence 4 of the landlord's package relates to the tenant being upset, this appears to be a disagreement, there was a rise in tension since the tenant and other occupant are in close proximity. The tenant is complaining about three different units: one regarding banging at night, another where a one month notice to end tenancy for cause has been issued, which was provided for this hearing, and is awaiting an RTB hearing since the occupant has disputed it, and the third regarding police activity where the occupant's son was removed from the rental unit so the issue is now resolved. The tenant's monetary application is unclear, which the tenant should explain during the hearing.

Landlord RH testified regarding the following facts. He was present when the former landlord and current landlord owned the rental unit. He inspected one unit twice regarding drug activity suspicion, and there was nothing out of the ordinary. There were lots of cars parked in front of the property. That occupant has disputed a one month notice issued to that unit, so an RTB hearing is pending. Landlord RH inspected another unit and did not notice anything suspicious. The cleanliness issue was taken care of, regarding tents. There was a police issue of a son fighting with his parents, and the son was charged, so he is no longer at the property.

Analysis

Legislation

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.

The following Residential Tenancy Branch ("RTB") *Rules of Procedure* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the tenant did not properly present her evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having been giving the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

The tenant spoke for the majority of the hearing time, as compared to the landlord. The tenant spoke for approximately 30 minutes, while the landlord spoke for approximately 10 minutes. The remaining 9 minutes was used to discuss service of documents, contact information and basic tenancy-related questions with both parties. Therefore, the tenant had ample time to go through her documents and present her evidence. The tenant filed this application on January 19, 2021, and this hearing occurred almost three months later on April 16, 2021, so the tenant had ample time to prepare for this hearing, after filing this application on her own accord.

The tenants submitted numerous documents for this hearing, mainly consisting of emails and letters. However, the tenant failed to go through these documents in any detail, often unable to find the pages she was referring to, since they were not organized or numbered in any way. The tenant spent a lot of the hearing time going through all of her documents and trying to find the right pages, as she said she had a lot of documents in front of her.

Orders to Comply

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, without leave to reapply.

While the tenants found the other occupants to be loud and noisy and were bothered by smoke, these complaints were not necessarily subject to intervention by the landlord. Residing in a multi-unit building sometimes leads to disputes between tenants. A certain level of noise is to be expected, given the location of the tenants' rental unit neighbouring other units. The occupants living around the tenants are entitled to quiet enjoyment of their units, including completing activities of daily living and using the units for different purposes. The tenants cannot decide how or when the occupants' units are to be used and for what purposes. The rights of both parties must be balanced.

When concerns are raised by one of the tenants, 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.

I find that the landlord described an appropriate process that was initiated to address the tenants' complaints regarding the occupants' noise and smoke. I see insufficient evidence to demonstrate that the landlord failed to take appropriate action to follow up on the tenants' noise and smoke complaints about the occupants living around them. The landlord provided and reviewed caution and warning notices given to other occupants that the tenants complained about. The landlord provided and reviewed a one month notice to end tenancy for cause that was issued to another occupant unit that the tenant complained about, which is awaiting an RTB hearing. The landlord inspected multiple rental units that were the subject of the tenants' complaints regarding noise, smoke and drug activity.

I find that the noise and smoke referenced by the tenants are a temporary inconvenience and not an unreasonable disturbance, as noted in Policy Guideline 6, above. I find that the tenants failed to provide sufficient evidence of a loss of quiet enjoyment. The tenant referenced a violation of noise bylaws but did not indicate, during the hearing, which bylaw, provide details of its application to the specific rental unit, or information regarding enforcement by bylaw officers. The tenant did not indicate specific dates when these noise or smoke violations occurred. She simply stated that they began in September 2020, continued in November 2020, and were still ongoing. The tenant stated that she contacted police, but did not provide police reports, stating that she could not get any, but the RTB had to request it for her. The tenant claimed that she only had police file numbers and the names of police officers, to which I informed her that I did not have access to the police file database to look up this information on her behalf.

Monetary Compensation

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

During the hearing, I notified the tenant that it was the tenants' burden of proof, as the applicants, to present and prove the tenants' monetary claim.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application for monetary compensation of \$2,671.76, without leave to reapply.

I find that the tenants did not provide sufficient evidence to substantiate their monetary claim for \$2,671.76 and failed to satisfy the above four-part test. The tenant did not indicate how the tenants arrived at the above monetary amount. During the hearing, the landlord even asked the tenant how she arrived at the above number and asked if she wanted to explain, and the tenant declined to do so.

The tenants provided a monetary order worksheet but did not reference it at all during this hearing. The tenant did not explain how she came up with the numbers and calculations indicated in the worksheet.

I also find that the tenants are not entitled to costs related to preparing for a hearing. The only hearing-related costs recoverable under section 72 of the *Act*, are for filing fees. Although the tenant did not review the tenants' monetary order worksheet during the hearing, the following amounts were taken from it. This includes \$2,538.48 for a loss of quiet enjoyment, a loss of sleep at night, time spent on this application, gas, and going back and forth to the post office. This also includes \$43.60 for post office tracking and mailing documents, \$81.86 for printer cartridges, and \$7.82 for printer paper and copies.

Conclusion

The tenants' entire application is dismissed 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: April 16, 2021

Residential Tenancy Branch