



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties were represented by legal counsel. At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Are the tenants entitled to a monetary award for loss or damage arising out of this tenancy?

Are the tenants entitled to the recovery of the filing fee?

Background, Evidence

Counsel for the tenants provided the following information and submissions. The tenants moved in on June 15, 2018 and moved out of the home on November 30, 2020. The tenancy was originally set to end on June 30, 2021. The monthly rent of \$5200.00 was due on the first of each month. Counsel submits that the tenants are seeking a monetary order for a loss of quiet enjoyment due to the landlord building a new home in the adjacent lot. Counsel submits that the tenants became aware of this on January 22, 2019 when they returned home from a vacation to find many of the trees on the property had been removed. Counsel submits that the tenants were subject to an extreme amount of noise and disruption including blasting and drilling.

Counsel submits that the noise was so bad that the tenants wore earplugs at various times during the construction. Counsel submits that the tenants took two unplanned vacations to get away from all of the noise and disruption in addition to another week of staying in a hotel in Vancouver. Counsel submits that the construction crew often cut through the subject property to access the other, stored supplies, equipment and tools on the subject property and parked their vehicles there. Counsel submits that although the tenants received a rent reduction in the amount of \$10,200.00 from May 2019 to November 2019, that does not stop them from pursuing further compensation through the Branch. Counsel submits that the \$10,200.00 was rent reduction to allow the tenants to find a new home, not compensation for noise or disruption. Counsel further advised that the tenants originally applied \$22,700 but have reduced that amount to \$20,100.00.

The tenants are applying for the following as submitted by them:

Month	Amount Claimed
January 2019	\$2600
February 2019	\$2600
March 2019	\$2600
April 2019	\$2600

May 2019	\$2600
June 2019	\$2600
July 2019	\$900
August 2019	\$900
September 2019	\$900
October 2019	\$900
November 2019	\$900

Counsel for the landlord made the following submissions. Counsel submits that the matter is *res judicata* as the tenants have already been compensated. Counsel submits that they brought this issue to the landlords' attention in May 2019, to which she promptly provided a rent reduction of \$1700.00 per month lowering the rent payable from \$5200.00 per month to \$3500.00 per month. Counsel further submits that because of this acceptance, the tenants are estopped from seeking further monetary compensation. Counsel submits that even if there is a finding that compensation is to be given to the tenants, the amount already given by the landlord is more than what they would be entitled to.

CL testified that the first she had ever heard of any issues from the tenants was in May 2019. CL testified that she was the one that suggested compensation to the tenants and that they were content with the amount she offered. CL testified that the issues couldn't have been that bad as the tenant asked her if she would be willing to sell them the home. CL testified that the tenants later purchased the adjacent home to the new construction. CL testified that she feels that the tenants have been fairly compensated and that no further award should be given.

Analysis

Although the landlords counsel believes the matter to be *res judicata*. I address it as follows:

Black's Law Dictionary defines *res judicata*, in part as follows:

Rule that a final judgement rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Counsel for the landlord submits that the matter was before another Arbitrator that made a finding that the compensation was already granted and therefore could not be

heard again by me. I have reviewed the decision from the previous hearing. That hearing dealt with the landlord's application. The Arbitrator delineated testimony submitted by the parties and provided that information as part of the background and evidence. The Arbitrator did not make a formal finding as it was not before him because it was a landlord application and not a tenant application. As a result, *res judicata* does not apply in the matter before me. I address the tenants claim and my findings as follows.

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.

Counsel for the tenants submits that the rent reduction was given as to allow the tenants to look for a new home. Counsel for the landlord submits that this is "two variations of the same theme".

The most compelling and relevant evidence before me came from CL. She was clear and concise that the first time she had heard of the issues was in May 2019. The tenants did not dispute this testimony. The landlord offered compensation to the tenants. I find that there was an offer, acceptance, and delivery of compensation to the tenants in the amount of \$10,200.00. In addition to that finding, the tenants have not provided sufficient evidence to show that they tried to mitigate the damage or loss from January 2019 to May 2019, when they did eventually advise the landlord, the landlord responded quickly and reasonably. Furthermore, I find that the amount of compensation given to the tenants is appropriate under the circumstances for the type of work, the frequency and overall impact.

In conclusion, I find that no further compensation is justified. The tenants have not provided sufficient evidence to prove their claim.

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: September 09, 2021

Residential Tenancy Branch