



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, MNDCT**

Introduction

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

- Authorization to recover the filing fee from the landlord pursuant to section 72; and
- A monetary award for damages and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This monthly rent for this periodic tenancy is \$1,602.00 payable on the first of each month. The rental unit is a suite in a multi-unit building. The tenants began complaining about noise from a neighboring unit in July 2020.

There was a previous dispute resolution hearing on November 9, 2020 under the file number on the first page of this decision dealing with the tenants' application seeking an order that the landlord provide services or facilities as required under the Act, regulations or tenancy agreement, specifically quiet enjoyment of the rental unit. The parties entered into a settlement agreement at the earlier hearing which includes the following terms:

1. The landlord agrees to write to the tenant(s) of unit 502L to advise of the noise disturbing others.
2. The landlord agrees to advise the tenant(s) of unit 502L that if the noise continues that a Notice to End Tenancy will be issued.

The tenants submit that despite the settlement agreement the landlord took inadequate action and allowed the neighboring occupants to continue making noise. The tenants now seek a monetary award in the amount of \$14,782.61 comprised of retroactive reduction in the rent for those periods when they experienced noise and disturbance and various costs of pursuing the present application.

The landlord gave evidence of the steps they took to address the noise complaints including issuing warning letters to the neighboring unit, offering alternative solutions to the tenants such as the option to change suites in the rental building, issuing a 1 Month Notice to End Tenancy to the neighbouring occupants and filing an application for dispute resolution. The landlord testified that the occupants of the neighboring unit vacated the rental unit on March 25, 2021 in accordance with a Mutual Agreement they entered to end the tenancy.

Analysis

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

While I accept the evidence of the tenants that they found the noise created by the neighboring occupant of the rental building to be at a level and frequency that necessitated intervention by the landlord, I find that the landlord took reasonable measures in addressing the tenants' concerns in a timely manner.

Residing in a multi-unit rental building sometimes leads to disputes between tenants. 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. The landlord gave evidence of a process they followed to address the complaints of the tenants. These measures included identifying and confirming that there is a basis for the complaints, issuing warning letters, issuing a Notice to End Tenancy and filing an application for dispute resolution while simultaneously continuing discussions with the affected parties.

I find that the measures undertaken by the landlord were reasonable, appropriate and timely. While the tenant complains that the steps were inadequate I find little evidence that the landlord breached any portion of the *Act*, regulations or tenancy agreement through their inaction.

I further find little evidence to support the tenants' claim for damages and loss. The tenant gave little evidence on how the noise from the neighboring unit affected them. There is no evidence that the tenants were unable to occupy the rental unit or needed to vacate. The evidence of the parties is that the landlord offered the tenants an alternate suite in the building but they declined. I find the testimony of the tenants to be

insufficient to establish that they have incurred any losses even if there was some breach on the part of the landlord.

I find that the tenants have not met their evidentiary burden on a balance of probabilities to establish that there has been any breach on the part of the landlord through their action or inaction and that there has been any damages or loss suffered. Consequently, I dismiss the tenants' application in its entirety without leave to reapply.

Conclusion

The tenants' 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 3, 2021

Residential Tenancy Branch