



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants on September 8, 2021, under the *Residential Tenancy Act* (the Act), seeking:

- An order for the Landlord to comply with the Act, regulation, and/or tenancy agreement; and
- Compensation for monetary loss or other money owed.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on January 18, 2022, and was attended by the Tenants and the Landlord, all of whom provided affirmed testimony. As the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP) package from the Tenants, which included a copy of the Application and the Notice of Hearing, I find that the Landlord was therefore sufficiently served for the purposes of the Act and the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure). As the Landlord acknowledged receipt of the Tenants' documentary evidence, I find that the Landlord was therefore sufficiently served with the Tenants' documentary evidence for the purposes of the Act and the Rules of Procedure. I therefore accepted the documentary evidence before me for consideration. No documentary evidence was submitted or served by the Landlord for consideration at the hearing. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold

their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the *Act* and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

Preliminary Matter #1

The Tenants stated that they vacated the rental unit on October 1, 2021. As a result, they withdrew their claim for an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement. There were no objections from the Landlord.

Preliminary Matter #2

The Tenants sought to amend their Application by increasing the amount of their monetary claim from \$1,500.00 to \$3,000.00. Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

The Tenants stated that on December 27, 2021, they texted the Landlord hoping to settle this matter. The Tenants told the Landlord that they would accept \$1,500.00 via settlement or would seek to amend their Application to increase the monetary amount of their claim. At the hearing, the Tenants stated that they did not receive a response from the Landlord and the Landlord agreed, stating that they received the text but did not wish to settle so they did not respond. The Landlord stated that as they never received an amendment from the Tenants increasing the amount of their monetary claim, they assumed it was proceeding as set out in the Application and that they opposed an amendment at the hearing. When I asked the Tenants why they did not amend the Application prior to the hearing, they stated that they did not know why.

I am satisfied that the Tenants had adequate time to amend the Application in accordance with rule 4.1 of the *Act*, should they have wanted to do so, and I do not find that the circumstances now before me meet the requirements set out under rule 4.2 of the Rules of Procedure for amending an Application at the hearing. As a result, I declined to amend the amount of the Tenants' monetary claim and the hearing proceeded based on the monetary claim amount set out by the Tenants in the Application, which is \$1,500.00.

Preliminary Matter #2

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Are the Tenants entitled to compensation for monetary loss or other money owed?

Background and Evidence

The Tenants stated that between the period of June 22, 2020, and September 7, 2021, they repeatedly complained to the Landlord about noise created in their rental unit from an air conditioning unit mounted in the window of the Landlord's residence, which was directly above the rental unit. The Tenants provided copies of text messages between them regarding these complaints and the Landlord's responses as well as comprehensive testimony regarding all the various complaints made to the Landlord, the dates of the complaints, and the times of the complaints. At the hearing the Tenants provided testimony regarding 20 separate noise complaints about the Landlord's air conditioning unit between June 22, 2020, and September 7, 2022. Although the noise complaints ranged in time of day, they were largely in the evenings and in the early hours of the morning, as they stated that the noise disturbed their sleep and the quiet enjoyment of their rental unit. The Tenants described the noise as a loud humming noise accompanied by vibrations, that prevented sleep, triggered migraines, and was so loud that they could not relax or even watch television at a reasonable volume while it was on.

The Tenants stated that despite the Landlord agreeing to get a portable AC unit instead, and to turn off the window AC unit by 11:00 P.M, the Landlord continued to run the AC unit at all hours of the day and night and therefore the noise disturbances suffered by them continued without abatement. Further to this, the Tenants states that the AC unit leaked on at least 3 occasions, causing water to enter the rental unit through a window and get on a bed and laptop. The Tenants stated that their sleep and quiet enjoyment of the rental unit was disturbed by the Landlord's repeated use of the AC unit and their refusal to turn it off at a reasonable time, necessitating frequent late-night and early morning text requests for it to be turned off. The Tenants sought \$1,500.00 in monetary compensation for their loss of sleep, loss of quiet enjoyment, and the inconvenience caused by the leaks and the need for frequent texts to the Landlord regarding the issue.

The Landlord stated that they had apologized to the Tenants for any disturbance caused by their AC unit and agreed that they had promised to turn it off by 11:00 P.M. However, the Landlord stated that sometimes they were delayed due to things like work, and that sometimes it needed to remain on for health reasons, such as the two days of extreme heat during heat wave, as their daughter has asthma that is exacerbated by heat. The Landlord stated that they moved the AC to another window and bought a portable AC unit, but that the portable AC unit was insufficient to cool their entire home, and as a result, they still needed to rely on the window unit sometimes.

The Landlord stated that although the Tenants had resided there since 2019, they had never previously complained about the AC unit, and that they had never received complaints from any previous Tenants. The Landlord stated that they were very accommodating to the Tenants in general and tried their best to be accommodating in relation to the AC unit. The Landlord denied that any compensation is due.

Although the Tenants agreed that the Landlord moved the AC unit, they stated it was not moved by the Landlord until August 2021, and only three feet to a nearby window, which not only did not resolve the noise disturbance issue, but actually increased the level of disturbance they were experiencing. They also stated that they had complained to the Landlord about the AC unit as early as June of 2020, not just in 2021.

The Tenants submitted 45 pages of text messages between themselves and the Landlord for my review and consideration. No documentary evidence was submitted by the Landlord.

Analysis

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, freedom from unreasonable disturbance. Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results and that the party that claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Policy Guideline (Policy Guideline) #16 states that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred and that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Policy Guideline #16 also sets out a 4 part test for determining whether compensation for damage is due, as follows. The arbitrator must be satisfied on a balance of probabilities that:

- A party to the tenancy agreement has failed to comply with the Act, regulations, or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss has proven the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Based on the significant documentary evidence submitted by the Tenants and the testimony of the Tenants at the hearing, I am satisfied that the Tenants were repeatedly and significantly disturbed by the Landlord's AC unit between June 22, 2020, and September 7, 2022, constituting a breach to their right to quiet enjoyment and resulting in a loss of value of their rental unit. I am also satisfied that they acted reasonably to mitigate their loss by repeatedly asking the Landlord to resolve the issue and proposing reasonable compromises, such as an agreement that the AC unit be turned off by 11:00 P.M. The Tenants sought \$1,500.00 in compensation for their loss of quiet enjoyment and devaluation of their tenancy over this period, which I find reasonable, given the repeated nature of the disturbances, the number of months in which the disturbances occurred, and the significant impact the Tenants state that the disturbances had on their sleep and life, as well as the inconveniences suffered by having to repeatedly address the issue with the Landlord and deal with several leaks caused by the AC unit.

As a result, I award the Tenants the \$1,500.00 sought pursuant to sections 7 and 28 of the Act. Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of \$1,500.00 and I order the Landlord to pay this amount to the Tenants.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of **\$1,500.00**. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Although this decision has been rendered more than 30 days after the close of the proceedings, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render this decision, are affected by the fact that this decision and the associated order were rendered more than 30 days after the close of the proceedings.

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 9, 2022

Residential Tenancy Branch