Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, MNDCT, FFT

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;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- a monetary order of $14,079.00 for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the $100.00 filing fee for this application, pursuant to section 72.

The landlord, the landlord's lawyer, the two tenants, tenant CG ("tenant") and "tenant TB" (collectively "tenants"), and the tenants' agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 57 minutes from 11:00 a.m. to 11:57 a.m.

The landlord, the landlord's lawyer, the two tenants, and the tenants' agent confirmed their names and spelling. The tenant and the landlord's lawyer provided their email addresses for me to send this decision to both parties after the hearing.

The landlord stated that she owns the rental unit and provided the rental unit address. She confirmed that her lawyer had permission to speak on her behalf at this hearing. She identified her lawyer as the primary speaker for the landlord at this hearing.

The tenant identified herself as the primary speaker on behalf of the tenants at this hearing. She confirmed that the tenants' agent, who is tenant TB's father, had permission to represent her at this hearing. Tenant TB confirmed that the tenant and the tenants' agent had permission to speak on his behalf at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")* does not permit recording of this hearing by any party. At the outset of this hearing, the landlord, the landlord's lawyer, the two tenants, and the tenants' agent all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

The landlord's lawyer confirmed receipt of the tenants' application for dispute resolution hearing package, including an amendment and late evidence from June 10, 2022. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application, amendment, and late evidence. I considered the tenants' late evidence from June 10, 2022, at the hearing and in my decision, even though it was received late by the landlord and the RTB, less than 14 days prior to this hearing, not including the service or hearing dates, contrary to Rule 3.14 of the RTB *Rules*. The landlord's lawyer confirmed that he reviewed and responded to the tenants' late evidence, and he did not object to me considering it at the hearing or in my decision.

The tenant confirmed receipt of the landlord's evidence. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlord's evidence.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to add one of the landlord's two surnames and add the "basement" unit to the rental unit address. The landlord confirmed that her surname was two words, not one. The tenants only included one word for the landlord's surname in their original application. Both parties confirmed that the tenants occupy the basement of the rental property, during this hearing. However, the tenants did not identify the basement in the rental property address when they filed their original application. I find no prejudice to either party in making these amendments.

Preliminary Issue – Severing the Tenants' Monetary Application

The following RTB *Rules* are applicable and state:

> *2.3 Related issues*
> *Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.*
>
> *6.2 What will be considered at a dispute resolution hearing*
> *The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.*
>
> *The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.*

Rule 2.3 of the RTB *Rules* allows me to sever issues that are not related to the tenants' main urgent application. Rule 6.2 states that I can decline to hear unrelated claims in the application and dismiss them with or without leave to reapply.

During this hearing, the tenant confirmed that the tenants' amendment to increase their monetary claim from $6,175.00 to $16,079.93 was filed on June 7, 2022, shortly before this hearing date on June 24, 2022, after the tenants' application was initially filed on March 7, 2022. The tenant confirmed that the tenants provided late evidence to the RTB and the landlord on the date of this hearing, June 24, 2022, and the tenants reduced their monetary claim from $16,079.93 to $14,079.00. The landlord's lawyer confirmed receipt of the above amendment and late evidence from June 24, 2022 but objected to them being considered at the hearing or in my decision, stating that he did not have a chance to review it or respond to it.

I notified the tenants that they were provided with a priority hearing date, due to the urgent nature of their claims for an order to comply and to restrict the landlord's right to enter. I informed them that these were the central and most important, urgent issues to be dealt with at this hearing. The tenants confirmed their understanding of same.

At the outset and end of this hearing, I notified the tenants that their monetary application for $14,079.00 was dismissed with leave to reapply. I informed them that

their monetary claim was a non-urgent lower priority issue, and it could be severed at this hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. I notified them that their evidence submitted on the date of this hearing on June 24, 2022, was late, as it was not provided at least 14 days prior to this hearing, not including the service or hearing dates, contrary to Rule 3.14 of the RTB *Rules* and the landlord did not have a chance to review or respond to it. The tenants confirmed their understanding of and agreement to same.

After 57 minutes in this hearing, there was insufficient time to deal with the tenants' monetary application, as I informed both parties that the maximum hearing time was 60 minutes. The tenants confirmed their understanding of same. The tenants applied for four different claims in this application. I dealt with three of the four claims made by the tenants at this hearing and in this decision.

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 an order restricting the landlord's right to enter the rental unit?

Are the tenants entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the documentary and digital 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 tenant's claims and my findings are set out below.

Both parties agreed to the following facts. The tenants reside in a basement suite of a three-level house, where the landlord lives on the two upper floors, and the landlord's son lives in the basement in a separate suite from the tenants. The tenants do not share a kitchen or bathroom with the landlord or her son.

The tenants provided a copy of their written tenancy agreement, which is signed by both parties, indicating that this tenancy began on March 1, 2021, for a fixed term of one

year, ending on February 28, 2022. The tenant confirmed that the tenants continue to reside in the rental unit, as of the date of this hearing.

Restriction of Landlord's Right to Enter

The tenant testified regarding the following facts. The landlord entered the rental unit twice without notice. Section 13.1 of the *Act* is applicable. The first time was on March 23, 2021, around 3:00 p.m. The second time was on March 25, 2022, around 11:42 a.m. The tenants provided videos regarding same. The tenants were home both times and recorded both incidents. The second time only tenant TB was home, and he recorded the incident because the tenant was at work. The first time the landlord was with a few workmen and opened the door to the tenants' rental unit. The tenant gave permission for entry and said it was ok but told the landlord by text message later, that she had to provide notice in the future. The second time the landlord's father apologized and said he came to the wrong room, when he accidentally opened the door. The tenant sent an email to the landlord regarding this entry and the landlord locked the door later, as it was left unlocked. The tenants want the landlord to give at least 24 hours' notice prior to entering the rental unit and provide this notice properly. The tenants installed a chain lock so the door can't be opened, and they also got a security camera.

The tenants' agent stated the following facts. Although the above two incidents are far apart, the tenants have a security concern. The tenants are worried that the landlord might enter the rental unit at any time, even when they do not have any clothes on.

The landlord's lawyer stated the following facts in response. In March 2021, during the first incident, the landlord and her helpers were trying to move a wardrobe and they opened the tenants' door to create room to maneuver. However, they did not enter the rental unit and the tenants agreed with the above information. During the second incident in February 2022, the landlord's father made a mistake, as per the tenant's own evidence, and he did not go into the rental unit, he just opened the door. The landlord's lawyer will speak to the landlord and review section 29 of the *Act* with her, regarding her obligations. The landlord is ok with providing 24 hours' notice to the tenants prior to entry. The tenants have put a chain lock on their door, which has solved the problem. The landlord has not entered the rental unit since then, this is not an ongoing issue, and the above incidents were one year apart.

Order to Comply

The tenant stated the following facts. The tenants want reasonable quiet enjoyment. There is noise at the rental unit and the tenants submitted evidence regarding this when they filed their application and again on June 9 and 10, 2021. The tenants want an order for the landlord's son to move to his dad's house because his parents are separated, or an order to restrict the landlord's son to reasonable hours of noise.

The tenants' agent stated the following facts. The landlord's son has a bedroom in the basement of the rental property. The tenants' bed is in the room next to the landlord's son's room. The landlord's son and the tenants share a wall. The landlord's son keeps a computer desk against the wall and the tenants' bed headboard is against that same wall, since there is no other way to configure the tenants' bedroom. The tenants were not told before they moved in, that the landlord's son would be living there, they were only told at the beginning of the tenancy when they moved in. The tenants agreed as long as it was reasonable. On March 1, 2021, the first night that the tenants moved in, they could hear the landlord's son talking and banging on his keyboard. The tenants submitted audio recordings of the noise, for this hearing. The tenants told the landlord about the noise by text message, she apologized, she said that she would take care of it, and it would not happen again. When the tenants told the landlord about the noise again, she said that the tenants could cancel their lease if they wanted. The tenants were shocked, and things went into a downward spiral from then.

The tenants' agent stated the following facts. Tenant TB was taught to be quiet if he lived in a basement. The noise occurred for six months. In September 2021, the landlord's son went to university. The tenants could hear the landlord's son talk, play video games, and slam doors between 12:00 to 6:00 a.m. The landlord's son comes home every month and has video game sessions late at night, so it is short-lived. It disrupts the tenants' sleep and work schedules. The noise frequency has increased and occurs daily. The landlord does not want to discuss the issue with the tenants and said not to contact her, as per the tenants' evidence submitted for this hearing. The landlord said that the tenants chose to stay at the rental unit. The noise is "24/7," as the landlord's son is back from university, he stays there all day, and the tenants are not getting any sleep. The tenants submitted evidence of a loud argument from April 17, when the landlord's son is loud, yelling, foot stomping, and door slamming. The tenants have a small painting business, and it is hard for them to be creative and produce art with all of this noise. The landlord has pursued ongoing threats against the tenants to move out and it is affecting the tenants' health and well-being. The tenants suggested constructive solutions and asked to limit the video gameplay of the landlord's son to

reasonable hours, not after 11:00 p.m. or 12 a.m. Tenant TB sleeps on the couch in the living room and the tenant wears a “contraption” to sleep. The tenants knock on the walls and the landlord’s son will lower the volume, but the noise has not stopped.

The tenant stated the following facts. The landlord installed sound panels, as per the landlord's evidence and invoices, showing she spent $3,400.00 to $3,500.00 in the quote. This is not the tenants’ fault. The tenants suggested lower cost options available online on Amazon. The landlord hired a contractor to install the sound panels, but this has not solved the noise problem. The landlord requested that the tenants move out and told the tenants that she wants to keep a portion or the entire amount of the tenants’ security deposit for the costs of the sound panels.

The landlord’s lawyer stated the following facts in response. This tenancy began on March 1, 2021, as per the tenancy agreement. The tenants’ noise complaints have been ongoing for a long time. On March 23, 2021, the landlord installed acoustic panels at the rental property, and this complies with the landlord's obligations under section 32 of the *Act*. The landlord dealt with the issue right away and the tenants are not satisfied with the noise reduction. The landlord’s lawyer listened to the audio recordings provided by the tenants, and it “does not sound bad.” The landlord’s son can be heard in a loud conversation with his mother, but this is normal behavior for a family. The tenants cannot expect there never to be noise at the rental property or to live in a place with “100% quiet.” The landlord cannot control her son and he has the right to live at the rental property too. There were two tenants living in the same basement rental unit for two years prior to these tenants moving in, and they did not make any noise complaints to the landlord.

The tenant stated the following facts in response. If there were no noise complaints from the previous tenants living at the rental unit, it is because they had a bed in the living room, which meant they could not sleep in the bedroom with the noise. The tenants saw the bed in the living room when they came to view the rental unit before moving in. The tenants enjoy the rental unit minus the infractions. The tenants did not add enough evidence of noise recordings for this hearing. It is hard for the tenants to find a different place to rent, in the same area. The tenants did not file an RTB application when the issue first came up in March 2021, one year prior to filing this application in March 2022, for the following reasons. When the noise first started, the tenants knew that the landlord’s son would be away at school in September 2021, and the tenants would be out for the summer, so it was ok. While the landlord’s son was away at school, the noise was less, but when he came back in December 2021, it was

bad. When the landlord's son was supposed to return back to school in January 2021, he did not do so, but the landlord said that she would deal with it.

The tenants' agent stated the following facts in response. It is reasonable for a young man, such as the landlord's son, to play video games. However, the landlord's son knows that the tenants are living next door to him. The tenants provided the best possible audio recordings that they could, but they recorded it with their iPhones, and it did not do justice to the noise at the rental unit.

Analysis

Burden of Proof

At the outset of this hearing and during this hearing, I repeatedly informed the tenants that as the applicants, they had the burden of proof regarding their application. The *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines require the tenants to provide evidence of their claims. The tenants confirmed their understanding of same and stated that they wanted to proceed with this hearing.

The tenants received an application package from the RTB and stated that they provided copies of these documents to the landlord, as required. I informed the tenants that they were provided with a "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, which contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

> *The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*
>
> - *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
> - *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
> - *Parties (or agents) must participate in the hearing at the date and time assigned.*

- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

I informed the tenants that a legal, binding decision would be issued within 30 days after this hearing date. This information is contained in the NODRP above. The tenants confirmed their understanding of same.

I notified the tenants that they were provided with a detailed application package from the RTB, including the NODRP, with information about the hearing process, notice to provide evidence to support their application, and links to the RTB website. I informed the tenants that it is up to them to be aware of the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines. I notified the tenants that it is up to them, as the applicants, to provide sufficient evidence of their claims, since they chose to file this application on their own accord. The tenants confirmed their understanding of same.

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 tenants and their agent did not properly present the tenants' evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure.*

During this hearing, I found the tenant's testimony to be confusing, unclear, and inconsistent. The tenant provided testimony with changing dates, times, and information. I informed the tenant about the above information during this hearing.

Although the tenants submitted a voluminous number of documents and digital evidence with their application, I find that the tenants and their agent failed to properly explain and review the evidence in detail at this hearing. They simply mentioned the existence of the evidence, along with the names of the files. I was left to review and filter through the tenants' evidence on my own, since the tenants, as the applicants, and their agent, failed to properly present and explain the evidence at this hearing.

This hearing lasted approximately 57 minutes, so the tenants and their agent had ample time to present their claims, submissions, and evidence at this hearing. The tenants filed this application on March 7, 2022, and this hearing occurred over 3.5 months later on June 24, 2022, so they had ample time to prepare for this hearing. The tenants brought an agent to this hearing, so they are aware of how to obtain assistance for this hearing.

Restriction of Landlord's Right to Enter

During this hearing, I informed the tenants that they provided the following details of dispute on the amendment to their paper application, when they added a claim to restrict the landlord's right to enter the rental unit. This amendment was received by the RTB on June 7, 2022, and states the following:

> *"Should the landlord want to show the suite to new renters, we would like to be present at those viewings. We do not feel comfortable having the landlord in our suite without us present."*

During this hearing, the tenant confirmed that the landlord was not showing the rental unit to new renters and the tenants were not moving out. The landlord's lawyer confirmed the above information. Therefore, I do not make any orders to restrict the landlord's right to enter based on the above information, as both parties agreed during this hearing, that the above events have not occurred and are not currently occurring. I cannot make any orders for hypothetical events that may or may not occur in the future.

Section 29 of the *Act* states the following:

> *Landlord's right to enter rental unit restricted*

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

On a balance of probabilities and for the reasons stated below, I find that the tenants provided insufficient evidence that they require an order to restrict the landlord's right to enter the rental unit. This claim is dismissed without leave to reapply.

I find that the landlord, the landlord's workers, and the landlord's father did not actually enter the rental unit on the two incidents mentioned by the tenants on March 23, 2021, and February 25, 2022.

I accept the affirmed, undisputed submissions of the landlord's lawyer and the testimony of the tenant at this hearing, that during the first incident on March 23, 2021, the landlord and her workers opened a door in order to move large furniture, they did not enter the tenants' rental unit, and the tenant provided her permission during that time. Section 29(1)(a) of the *Act* above, states that the landlord can enter the rental unit if the tenants provide permission at the time of entry. I find that the tenant provided permission at the time, to accommodate the movement of large furniture, but the landlord and her workers did not actually enter the tenants' rental unit, they just opened a door to the unit.

I accept the affirmed, undisputed submissions of the landlord's lawyer and the testimony of the tenant at this hearing, that during the second incident on February 25, 2022, the landlord's father mistakenly opened the rental unit door and then apologized, indicating he had the wrong door. I find that the landlord's father did not actually enter the tenants' rental unit, he just opened a door.

I accept the affirmed, undisputed submissions of the landlord's lawyer and the testimony of the tenant at this hearing, that there have been no other incidents aside from the above two dates, which are approximately one year apart, and that the tenants have added a chain lock to their door for privacy, which the landlord agrees is acceptable.

I accept the affirmed, undisputed submissions of the landlord's lawyer during this hearing, that he will discuss the landlord's obligations pursuant to section 29 of the *Act* with the landlord and that the landlord agrees to provide the tenants with 24 hours' written notice prior to entering the rental unit and to abide by section 29 of the *Act*. This is one of the orders that the tenant requested during this hearing.

Accordingly, I order both parties to comply with section 29 of the *Act* for the remainder of this tenancy.

Order to Comply

Section 28 of the *Act* deals with the tenants' right to quiet enjoyment:

> *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.*

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 find the landlord's son to be loud and noisy, these complaints are not necessarily subject to intervention by the landlord. Residing in the basement suite of a house, where the landlord's son lives next door in another suite, and the landlord lives on the two upper floors, can sometimes lead to disputes between occupants. A certain level of noise is to be expected, given the location of the tenants' rental unit neighbouring the other basement unit, where the landlord's son is residing. The landlord's son is entitled to quiet enjoyment of his unit, including completing activities of daily living and using his unit for different purposes. The tenants cannot decide how or when the landlord's son's unit is to be used and for what purposes. The rights of all occupants must be balanced.

When concerns are raised by the tenants, the landlord must balance her responsibility to preserve the tenants' right to quiet enjoyment against the rights of the landlord's son, another occupant, who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. A landlord may try to mediate such disputes if she can, but sometimes more formal action is required.

I find that the landlord's lawyer described an appropriate process that was initiated by the landlord to address the tenants' complaints regarding the noise from the landlord's

son. I see insufficient evidence to demonstrate that the landlord failed to take appropriate action to follow up on the tenants' noise complaints.

I accept the undisputed, affirmed submissions of the landlord's lawyer and the testimony of the tenant at this hearing, that the landlord, at her own cost, had professional contractors install acoustic sound panels at the rental property, within a reasonable period of time on March 23, 2021, after the tenants first complained about the noise issue. The tenants suggested an installation of sound panels to the landlord, as per their email, dated March 20, 2021, a copy of which was provided by the landlord for this hearing. The landlord installed the acoustic sound panels on March 23, 2021, which I find is a reasonable period of three days from March 20, 2021. I find that the landlord has fulfilled her obligations pursuant to section 32 of the *Act*.

I do not find it reasonable to require the landlord's son to not speak, play video games, make any noise, or complete activities of daily living in his own unit, as he is also entitled a right to quiet enjoyment, along with the tenants. I have reviewed the audio recordings provided as evidence by the tenants, and I find that the talking and music sounds on the recordings are not unreasonably loud.

I note that the landlord provided a copy of an email, dated March 29, 2021, from the tenants' agent to the landlord, indicating that the tenants were provided with a month, after they signed the written tenancy agreement to reconsider their tenancy, since they were told that the landlord's son would be living in the basement room next to them. The tenants' agent indicated in that email, that the tenants wanted to move into the rental unit, they understood they were living in a home with a family also living there, and they expected daily sounds from a family, including for extended hours during holidays and breaks. The tenants' agent also indicated in that email that the tenants were grateful that the landlord promptly responded to the tenants' concerns, particularly during their first month of tenancy in March 2021.

I do not find it reasonable or appropriate for the tenant to request an order during this hearing, that the landlord's son move out of the rental unit and go live with his father in a separate unit. I do not have the authority to issue an order of possession against a third-party occupant who is not a party to this proceeding and who did not attend this hearing. I do not have the authority to require the landlord to evict her son from the rental property because the tenants want him to leave. The tenants have not vacated the rental unit, due to the noise, so they cannot ask for the landlord's son, another occupant, to be evicted from the rental property, simply because the tenants want to remain at the rental unit.

I note that the tenants provided copies of emails between themselves and the landlord from January 4, 2022, and January 10, 2022, where the landlord inquired if the tenants wanted to continue their tenancy agreement for six months after March 2022, and the tenants responded that they agreed and would provide the landlord with six post-dated rent cheques for same. While the tenants identified noise from the landlord's son as an issue in their subsequent email to the landlord on February 18, 2022, they confirmed that they would provide rent cheques on a monthly basis to the landlord, if her son was to remain at the rental unit. Therefore, I find that the tenants' implied and express conduct of continuing to remain at the rental unit and agreeing to extend their tenancy agreement after the fixed term end date of February 28, 2022, despite identifying noise issues with the landlord's son, show that they accept and agree to continue living in a basement rental unit with the sounds and noises of the landlord's son living next door, and the landlord living on the upper floors.

I find that the noise referenced by the tenants is 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.

As the tenants were mainly unsuccessful in this application, I find that they are not entitled to recover the $100.00 filing fee from the landlord. This claim is dismissed without leave to reapply.

Conclusion

I order both parties to comply with section 29 of the *Act* for the remainder of this tenancy.

The tenants' application for a monetary order of $14,079.00 for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, is dismissed with leave to reapply.

The remainder of the tenants' 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: June 27, 2022

Residential Tenancy Branch