



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties each called 1 witness, who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses. Due to time constraints, the parties were not given an opportunity to provide oral closing submissions.

Although I questioned the parties with respect to exchange of evidence, the parties agreed that all evidence should be reviewed, and therefore, all evidence provided by the parties is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of quiet enjoyment?

Background and Evidence

The tenant testified that this month-to-month tenancy began on January 7, 2023. Rent in the amount of \$1,650.00 was payable on the 7th day of each month. On December 3, 2022 the landlord collected a security deposit from the tenant in the amount of \$825.00 which has been returned to the tenant in full, plus interest. The rental unit is a

basement suite, and the landlord resided in the upper level of the home during the tenancy.

The tenant further testified that on January 10, 2023 the tenant gave notice to end the tenancy effective on February 9, 2023, however the tenant and family vacated the rental unit on January 12, 2023, 5 days after the tenancy began.

Since moving in, a strong noise from the house sounded 24 hours per day. The tenant talked to the landlord a few times in an attempt to solve it, but received no response from the landlord, except that the landlord could not do anything about it. The noise was really loud, like a bass noise from a fan or somewhere, which sounded even when the tenant wore earplugs. The tenant waited for a repair and the landlord was very frustrated. The same evening, the tenant received 53 text messages from the landlord's boyfriend, copies of which have been provided for this hearing, some of which telling the tenant to go back to the tenant's parent's house. The tenant was very scared and the noise couldn't be solved. The tenant did not contact the landlord's boyfriend, but the boyfriend started texting the tenant. The tenant only responded that the landlord's boyfriend should stop texting or the tenant would call police.

A repair person was there on January 12, 2023 but couldn't figure out what the issue was. It was a fan, but the repair person couldn't reduce the noise.

The rental unit was occupied by the tenant and the tenant's partner. The tenant's new rental costs less, and the tenant claims a proportional amount that the tenant pays for the new rental. The tenant pays \$1,450.00 and claims \$1,430.00.

The tenant tried his best to solve the problem with the landlord, but the landlord didn't respond, and text messages from the landlord's boyfriend escalated things. Instead of doing anything, the landlord said it was the tenant's problem and the repair person was the tenant's responsibility as well. The tenant didn't call a repair person, and the landlord said that the tenant had no right to do so, and the landlord would get a repair person herself.

The tenant contacted a physician due to headaches and told the physician about the noise. The physician said that could have been the cause, but didn't know for sure. The tenant believes the noise caused the headaches, making the rental unit not livable.

The tenant was in the rental unit for the purposes of storing boxes on December 18 and 21, 2022, but being there for 5 minutes, the tenant did not notice the noise, until after moving into the rental unit in January, 2023.

The landlord completed a move-in condition inspection report without the tenant present, which was provided to the tenant and the tenant signed it, but didn't hear the noise at that time. However, it happened 24 hours per day, stopping for a minute and carrying on.

The tenant's witness is a friend of the tenant, and they live together.

Since they moved into the rental unit, a loud noise existed on and off for 24 hours per day. The tenant tried to talk to the landlord, and the landlord contacted a repair person. The repair person couldn't figure out the sound, and the same day, the landlord's ex-boyfriend kept sending text messages, which were viewed by the witness.

The sound comes from a few different places in the rental unit, which was very distracting for the tenants and the landlord could not figure it out, or was not willing to replace the fan or fix the problem until the witness told the landlord that the witness would get a repair person. The only option was for the tenants to find another place to live.

The landlord had agreed that the tenants could put some boxes into the rental unit on December 18, 20 and 21, 2022, prior to the commencement of the tenancy, and the tenants were out of town for a couple of days. The witness moved in before the tenant moved in and noticed the noise but didn't complain to the landlord. While moving items in, the tenant and witness were going back and forth and didn't notice the noise.

The witness completed the move-out inspection and returned the keys on February 7, 2023 with the landlord's father and the landlord. The security deposit and interest was returned to the tenants at move-out.

The landlord testified that the tenancy agreement signed by the parties shows that January 7, 2023 was the start of the tenancy. The tenants gave notice to end the tenancy on January 10, 2023, which is 3 days after the start of the tenancy, so the tenants had a month of time to reside there.

The tenant heard the heat pump on 3 occasions in December, asking to move items in early and to leave their car at the rental unit. The heat pump was running because it was snowing.

The landlord has provided a copy of an inspection from a technician completed on January 12, 2023 showing that there were no failing parts, nor anything to repair, and the heat pump was in good working order. The rental unit is livable and the heat pump

did not need repair and was working to standard. The landlord felt pressure to have the heat pump looked at.

The landlord has also provided copies of numerous text messages, including a request from the tenant for return of the security deposit when the landlord was already in the process of having a technician look at it. In the texts the tenant says that the air conditioning caused tinnitus and asked for a repair, but the landlord has no control over the tenant's health issues.

The tenant did not give 1 month's notice before the date rent is due to vacate the rental unit. However, the landlord was too afraid to ask for an additional month owing and lost rental revenue as a result. The landlord could not re-rent for February, but the unit was re-rented effective Mar 1, 2023.

The landlord's witness is the landlord's father and does not reside with the landlord.

The witness observed the tenants going in and out of the rental unit on 3 dates in December, 2022. It was cold and there was almost 2 feet of snow and the heat pump was running when the tenants were there. The heat pump in the rental unit works better than the one the witness has.

The witness was also present during the move-out condition inspection on February 7, 2023, going room to room and the parties agreed the condition was good.

Analysis

In this case, the tenant seeks monetary compensation in the amount of \$1,430.00 for the landlord's failure to provide quiet enjoyment of the rental unit. The onus is on the tenant to establish that the tenant suffered damages and that the damages suffered were the result of the landlord's failure to comply with the law or the tenancy agreement.

The tenants stayed in the rental unit for less than a week, and the parties seem to agree that the noise was caused by a heat pump, although the landlord testified that in a text message the tenant indicated that the air conditioner caused tinnitus. There is no medical evidence to satisfy me that anything in the rental unit caused any illness of the tenant. The landlord has provided evidence of a technician's assessment which found nothing in need of repair.

A landlord is required to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant, and I find that the landlord has done so, and nothing was noted as needing repair.

A landlord is also required to provide a tenant with quiet enjoyment of a rental unit, free from unreasonable disturbance. I refer to Residential Tenancy Policy Guideline 6 – Entitlement to Quiet Enjoyment, which states, in part:

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

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.

In this case, I find that the tenant has failed to establish that the landlord has failed to comply with the *Act* or the tenancy agreement with respect to noise caused by a heat pump or an air conditioner.

I do find somewhat disturbing the multiple text messages sent to the tenant from the landlord's boyfriend, some of which were quite threatening and/or intimidating. I also note that they largely dealt with the tenants' requests for repairs. That in itself is a loss of quiet enjoyment, free from unreasonable disturbances.

In the circumstances, I find that the tenant is entitled to nominal damages, where there has been no significant loss proven, but it has been proven that there has been an infraction of a legal right.

In determining quantum, I consider that the tenancy began on January 7, 2023 and the tenants gave notice to end the tenancy on January 10, 2023 effective on February 9,

2023. The tenants actually vacated on January 12, 2023, which is 5 days after the tenancy began. I find that the tenants are entitled to nominal damages in the equivalent of 5 days rent, or \$266.10 ($\$1,650.00 / 31 = \$53.22 \times 7 = \266.10).

I grant a monetary order in favour of the tenant as against the landlord in the amount of \$266.10. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$266.10.

This order is final and binding and may be enforced.

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: November 21, 2023

Residential Tenancy Branch