



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord on June 25, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order authorizing them to change the locks to the rental unit?
- b. Whether the tenants are entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?
- c. Whether the tenants are entitled to a monetary order for the reduced value of the tenancy and if so how much?
- d. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on July 1, 2014. The present rent is \$2542 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$1237.50 at the start of the tenancy.

There are three rental units in the rental property. There is a basement suite and a rental unit on the Main floor. The tenants occupy the third and fourth floor (and one room on the main floor). There is also a coach house where the landlords reside.

The tenants seek compensation for the reduced value of the tenancy caused by the landlord's breach of the covenant of quiet enjoyment. The tenants testified there enjoyment of the rental property was significantly disrupted because of the construction noises caused by the renovations completed on the rental property. The tenant's also testified the landlord on numerous occasions has entered the tenant's rental unit without giving proper notice and without the tenants being present. The tenants claim \$4320 in compensation.

Briefly, the tenants testified as follows:

- In July, August and September 2014 the tenants identified 12 occasions where the landlord accessed the tenant's rental unit without giving proper notice to do renovation work.
- At the end of September the tenant agreed the landlord could give notice by e-mail provided the landlord copied all of the applicants.
- The tenants testified they were without water for 12 days. In July they were without water for 48 hours. On the other occasions they were without water for 3 to 12 hours.
- From July to November their enjoyment of the rental unit was significantly diminished because of construction work which occurred for 6 to 7 days a week lasting 8 to 13 hours a day.

- In November 2015 the parties agreed to a 20% discount on the rent which amounted to \$480 per month. The tenants took advantage of this reduced rent for December and January.
- The contractors completed their work in early February. However, the construction noises continued on an intermittent basis.
- The tenant testified that the construction noises continued for 15 to 20 days in February lasting 8 to 12 hours a day.
- The noises consistent of sawing, nail guns, hammering etc.
- The tenants are on different schedules. Often there was at least one tenant home during the work day.
- The tenants complained that the construction noises continued until the date the Application for Dispute Resolution was filed.
- At the end of January the landlord and the tenants had a dispute and the landlord refused to copy all of the tenants. The tenants have documented over 20 occasions where the landlord has gained entry without giving proper notice. In most of these cases the landlord gave notice to the main tenant but did not copy the other tenants.
- The tenants have documented the noise problems. The tenants recorded the audio of construction noises on many occasions and on some occasion they have 3 to 4 audio recordings.
- The documentation indicates significant noise disturbances on February 19, 20, and 21. There are audio recordings for March 4, 2015, March 21, 2015, April 7, 2015, April 9, 2015, April 10, 2015, April 12, 2015, April 21, 2015, April 21, 2015, May 5, 2015, May 6, 2015, May 8, 2015, May 13, 2015, May 20, 2015, May 23, 2015, May 25, 2015, June 12, 2015 and June 15, 2015.
- The tenants also complained about one of the downstairs tenants smoking and demanded to know whether this was a smoking or non smoking building.
- The dispute escalated when the landlord called the police after receiving a demand letter from the tenants.

The landlord disputes much of the tenant's evidence. Briefly the evidence of the landlord is as follows:

- The landlord testified the tenants have presented a lot of inaccuracies in their testimony. At no time did the landlord intend to inconvenience the tenants
- The tenants were aware the rental property was being renovated when they took possession.
- At all times the work was carried out during times authorized by the City bylaws.
- The failure of the landlord to give sufficient notice was often caused by extenuating circumstances such as contractors, the City or Inspectors changing their scheduled times at the last minute.
- The water issue was caused because of the City not giving proper notice.
- In January 2015 the landlord was aware the tenants were away on holidays and she stated she thought she had the tenant's permission to come in and complete the painting. In fact, one of the tenants was home and this tenant was disturbed. The tenants responded stating they did not object to the landlord completing the painting but they objected to unauthorized electrical work that took place without notice.
- The contractors completed the exterior work on February 8 and 9 and moved onto other jobs after that time.
- The only tenant on the tenancy agreement is KL. The landlord testified that she in January she determined it was not appropriate to deal with all of the tenants and communicated only with KL. It was KL's responsibility to pass on information to the other roommates/tenants.
- This is a no smoking house. The landlord produced evidence from other tenants in the rental property that perhaps the smell was that of a skunk or something else.
- The landlord has communicated with the tenants in May trying to arrange a time for an inspector to come in and stating they do not want to enter unless at least one of the tenants was present.

- She testified she felt threatened by the tenants letter in late May and she phone the non emergency police line to see where this amounted to harassment.
- She referred to a letter from the tenant who lives in the suite on the main floor. He works from home. The letter stated he has not been disturbed by noises.

Law

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).

Director's orders: landlord's right to enter rental unit

70 (1) The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [*landlord's right to enter rental unit restricted*].

(2) If satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director, by order, may

- (a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and

(b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

After hearing the conflicting evidence of the parties I determined the landlord has failed to give proper notice on many occasions. I do not accept the submission of the landlord that an e-mail to KL giving notice is sufficient. While the parties agreed in September that the landlord could use the e-mail as a means of communications this was conditional on the landlord copying the other tenants/roommates. The landlord may have a legal right to deal only with KL. However, in refusing to copy the other tenants/roommates the landlord breached this agreement and must give notice in accordance with section 29 of the Act. The landlord cannot unilaterally e-mail KL and consider this to be sufficient notice.

However, while there are numerous incidents of the landlord violating section 29 I am not of the view that an appropriate remedy is to make an order restricting or denying the landlord access or changing the locks. Most of the numerous violations involve the failure to give proper notice. An order restricting access or changing the locks does not remedy this situation. I am satisfied there is good reason for the landlord to have a key to the rental unit. In my view, the appropriate remedy is to compensate the tenants for the landlord's breach rather than make the order requested.

As a result I order that the tenant's application for an order changing the locks and restricting or suspending access is dismissed.

Tenant's Application for a Monetary Order:

Section 28 of the Residential Tenancy Act provides as follows:

Protection of tenant's 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.

Policy Guideline #6 provides as follows:

“Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

It is necessary to **balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.**

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

Analysis

I determined the construction noise has resulted in a substantial interference with the tenants’ enjoyment of the rental unit which would constitute a breach of the covenant of quiet enjoyment. I am satisfied the construction work was involved significant and occurred over a lengthy period of time. The landlord is liable to the tenants for the reduced value of the tenancy even if the landlord made every effort to minimize the disruptions.

It is difficult to value the tenants’ loss. The parties reached a settlement where the rent was reduced for the months of December 2014 and January 2015 in the sum of \$480 per month. I am satisfied the disruption was greater over that period than the period July to November and February onward. Also that settlement included compensation for disruptions caused by entries without giving sufficient notice which I will be dealing with separately. In the circumstances I determined the tenants are entitled to the following:

- Compensation of \$300 per month for the period July 2014 to November 2014 for a total of \$1500.
- Compensation of \$300 for February 2015. The contractors did not vacate the rental property until February 8 or 9. In addition the tenants gave evidence that on three days in late February they had to leave the property because of excessive noise. There was noise on other days as well.
- Compensation of \$150 per month for the period March, April, May and June for a total of \$600. I determined the construction noises continued although they were intermittent and less intense.

The landlord has breached the Residential Tenancy Branch in failing to give proper notice when entering the rental unit. I was not satisfied that it was appropriate to make an order to change the locks or restrict the landlord's right of access. However it clear the landlord has shown little regard for the provision of the Act and the privacy of the tenants. I determined the tenants are entitled to compensation in the sum of \$50 per month for the landlord's failure to give proper notice and the breach of privacy commencing July 2014 and ending June 30, 2015. Thus the tenants have established a claim of \$600.

The tenants failed to prove they are entitled to compensation for issues relating to smoke and the claim for compensation is dismissed.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$3000 plus the sum of \$50 in respect of the filing fee paid pursuant to section 49 for a total of \$3050 such sum may be deducted from future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: August 20, 2015

Residential Tenancy Branch

