

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, O, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order that the landlord be ordered to evict another tenant. Both parties participated in the conference call hearing.

At the hearing both parties claimed to have submitted evidence for my consideration. At the time the hearing began, no evidence had been received by the Residential Tenancy Branch. The landlord testified that she did not receive a copy of the tenant's evidence. The tenant testified that she sent evidence by email on September 3. Residential Tenancy records show that an email was received from the tenant on September 3 and that the tenant was advised by return email on September 4 that evidence could not be submitted by email but had to be faxed, mailed or served in person. Accordingly none of the tenant's documentary evidence could be considered.

As for the landlord's documentary evidence, the landlord acknowledged that she had not served the tenant with the evidence. As the parties are required to submit copies of their evidence to the other party, the landlord's evidence, while received at this office late, was not considered. I have relied solely on the oral evidence provided by the parties and by the landlord's witness in making this decision.

The tenant stated that she attempted to amend her application to include a claim for compensation for the loss of a mattress and that she provided evidence with her September 3 email. I find that the claim cannot be amended as neither the Residential Tenancy Branch nor the landlord had prior notice of her request to amend the claim.

Issues to be Decided

Has the tenant been deprived of quiet enjoyment of the rental unit and is she entitled to

compensation?

Can I order the landlord to evict another tenant?

Background and Evidence

The tenant lives on the second floor of a low rise apartment building. The tenant testified that in August 2008, a family moved into the apartment on the floor immediately above her (the "Upper Tenants") and since that time have created an extreme disturbance. The tenant testified that the mother in the family of Upper Tenants is confined to a wheelchair and that the wheelchair creates noise which disturbs the tenant. The tenant further testified that the mother often screams and cries loudly, disturbing the tenant who can hear the sound from the rental unit. The tenant further testified that the Upper Tenants frequently play loud music until the early hours of the morning and that she can hear the younger children jumping up and down and fighting. The tenant and the Upper Tenants have had a number of unpleasant interactions. The tenant acknowledged that she has yelled and cursed at the Upper tenants and claimed that the Upper Tenants have responded in kind. The tenant further testified that until the Upper Tenants moved in, she has had no problem with bedbugs or cockroaches, but that since they moved in, she had cockroaches at one point which were immediately exterminated when the landlord acted upon the tenant's complaint and that she has had an ongoing problem with bedbugs which has been addressed by the landlord on a number of occasions. The tenant testified that she has complained to management a number of times about the disturbance from the Upper Tenants and about the bedbugs. The tenant acknowledged that the landlord had acted to address the bedbug problem. The tenant seeks the return of 50% of her rent for August 2008 – July 2009 inclusive, \$100.00 to compensate her for cleaning her apartment because of cockroaches and bedbugs and \$50.00 for food which she claims was ruined by cockroaches.

The landlord acknowledged that she had received complaints about noise disturbance from the tenant and that each time she spoke with the Upper Tenants and asked them to keep quiet. The landlord testified that they have never had cockroaches in the building but that there has been an ongoing bedbug problem which has required multiple treatments. The teenaged son in the Upper Tenants family testified that his

mother suffers from amyotrophic lateral sclerosis (ALS), is wheel-chair bound, non-verbal and has a life expectancy of just 12 – 18 months. The son testified that his mother is distressed and screams and cries out of frustration with her condition. The son denied that his family made excessive noise as alleged by the tenant and testified that the noise generated by the family was to be expected in the normal course of enjoying their home. The parties agreed that the building is an older building and that the floors in the units are hardwood floors.

Analysis

There is no question that the tenant is entitled to the quiet enjoyment of her rental unit. This is a right conferred by section 28 of the Act. Section 28(b) grants the tenant the right to freedom from unreasonable disturbance. One of the determinations I must make is whether the disturbance alleged is unreasonable. The building in which the rental unit is situated is an older building with hardwood floors. One would have to expect that soundproofing in such a building would not as efficient or up-to-date as that found in a newer building with carpets. The Upper Tenants have denied playing loud music or causing noise beyond what might be expected in everyday life. The tenant has not provided corroborating evidence and the landlord has not had complaints from other tenants. However, the Upper Tenants have acknowledged that the mother frequently cries or screams. I find that the tenant has not proven that the Upper Tenants have caused an unreasonable disturbance with any noise except for the mother's cries and screams, which I find to be unreasonably disturbing. I find that an award of \$150.00 will adequately compensate the tenant for this disturbance through the end of July 2009 and I award the tenant that sum.

As for the tenant's claim that she has lost quiet enjoyment due to bedbugs and cockroaches, in light of the tenant's acknowledgement that the landlord has repeatedly engaged a pest control company to treat the affected units, I find that the landlord is acting reasonably to address the problem. I dismiss this part of the tenant's claim.

As the tenant has enjoyed only partial success in her claim, I find it appropriate to award her \$25.00, or half of the filing fee paid to bring this application.

Conclusion

The tenant is awarded a total of \$175.00 which represents a \$150.00 award for loss of quiet enjoyment and recovery of \$25.00 which is half the filing fee. The tenant may deduct this sum from future rent owed to the landlord.

Dated September 15, 2009.
