



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes PLC, MNDC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking orders to have the Landlord comply with the Act or tenancy agreement, for monetary compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Should the Landlord be ordered to comply with the Act or tenancy agreement?

Is the Tenant entitled to monetary compensation under the Act or tenancy agreement?

Background and Evidence

The Tenant has complaints about noise coming from the rental unit above his. He talked to the Agent for the Landlord and then wrote to the Landlord on November 10, 2009, complaining about noise from above.

The occupant in the unit above the subject rental unit apparently smokes at various times in the night and into the early morning hours. The occupant opens a window, which is directly above the Tenant's bedroom window, in order to smoke. The noise from the window going up and down is loud enough to wake the Tenant. The occupant above can be heard coughing, gagging and spitting out the window. The Tenant also reports ashes from the unit above are coming into his bedroom window. The Tenant testified he moved to the living room area in order to get some sleep, and this has continued since November of 2009.

The Tenant has written the Landlord several times about the noise from the unit above.

In a November 13, 2009, letter, the Tenant informed the Landlord he had been woken up four times during that night. On January 6, 2010, the Tenant informed the Landlord he had been woken up at 2:30 a.m. by the noise, and suggests the Landlord replace the window, among other options. On January 28, 2010, the Tenant wrote the Landlord again and explained the noise from the occupant and the window were still waking him up. On February 3, 2010, the Tenant wrote the Landlord again about the noise and explained the occupant above had disturbed him with the window and other noise and disturbed him eight times in the night, between midnight and 7:30 a.m.

The Tenant is requesting a rent reduction of 50% for the loss of quiet enjoyment of the rental unit.

The Agent for the Landlord testified that she had spoke with the occupant above about the noise he was making. The Agent explained the occupant is elderly, has health issues and does not sleep well.

The Agent testified that she had given the occupant warnings that the noise must stop. The Agent further testified that the window in the unit above had wheels installed in January of 2010, in order to cut down the noise of the window. The Agent testified that she had given the occupant written warnings, however, these were not provided in evidence.

The Agent further testified that the children of the occupant were looking for other living accommodations for him.

Analysis

Based on the testimony, evidence and on a balance of probabilities, I find that the Landlord has breached the Act by not addressing the loss of quiet enjoyment of the subject rental unit by the Tenant.

Therefore, I am ordering the Landlord to comply with the Act immediately, to address the noise issuing from the unit above the Tenant's. The Landlord must take action under the Act to stop the occupant above the rental unit from disturbing the quiet enjoyment of the Tenant below.

I further find that the loss of use of the bedroom in the unit, and the deprivation of quiet enjoyment of the rental unit, has caused the Tenant to suffer a loss. The Tenant's evidence, in regard to damages, is that on some occasions he has had to take time off work due to the loss of sleep during the night. He has had to sleep in the living room of the rental unit and despite this, still continues to lose sleep nearly every night.

I find the loss of quiet enjoyment of the rental unit, and in particular on a nightly and ongoing basis, has caused the Tenant to suffer significant losses. I further find the Landlord has done very little to address the situation in a timely manner.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Therefore, I find and order that the Tenant is entitled to a rent reduction of 50% retroactive to November of 2009, and the rent reduction of 50% will continue until the Landlord has taken action under the Act sufficient to stop the loss of quiet enjoyment of the rental unit by the Tenant.

The equivalent compensation of the Tenant for the past five months, is \$300.00 per month, totalling \$1,550.00 up to the end of March 2010, which includes the \$50.00 filing fee for the Application. The Tenant may recover the compensation by deducting the \$1,550.00 from future rent payments, which includes the reduced rent payments of 50%, as applicable.

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 23, 2010.

Dispute Resolution Officer