

DECISION

Dispute Codes: MNDC, OLC and FF

Introduction

This application was brought by the tenant seeking monetary compensation and an order for landlord compliance with the legislation and rental agreement on the grounds that the landlord has breached the tenant's right to quiet enjoyment under section 28 of the Act. The tenant also seeks to recover the filing fee for this proceeding from the landlord.

Issues to be Decided

This application requires a decision on whether the noise disturbance from a neighbouring tenant has been sufficiently disruptive to constitute a breach of the covenant of quiet enjoyment, and if so, whether the landlord has been negligent in her duty to investigate and respond to the alleged breach.

Background and Evidence

The tenancy began on or about October 1, 1996. Rent is \$1,016 per month and the parties concur that a security deposit of approximately \$300 was paid at the beginning of the tenancy. The rental unit is one of 40 in a concrete apartment building constructed in approximately 1965.

During the hearing, the tenant gave evidence that, since October of 2009, he had made approximately 20 verbal reports to the building caretaker of late night noise coming from the unit next to his. He stated that he was only complaining about noise after 11 p.m. which resulted from the neighbour's 10 and 12 year old sons. He said that the mother and sons go to bed at approximately 10 p.m., but that the boys frequently get up at 11 p.m. and play fight until 1 a.m.

He said that the disturbance had been sufficiently frequent that he had stopped sleeping in his bedroom which adjoins the neighbouring unit, and now sleeps on his living room floor. He said he had attempted to resolve the problem by requesting the assistance of the caretaker and by appealing to the neighbour.

The landlord stated that she had been apprised of the conflict by the caretaker. The caretaker lives diagonally across the hall from the applicant tenant and had not heard the noise first hand and he believed he could resolve matters by diplomatic means. The tenant said the noise carried to his unit because of hardwood floors in the units and might not be heard across the hall.

The landlord had written to the tenant on February 24, 2010 acknowledging his telephone messages and that the caretaker had apprised her of his concerns. She

stated that she was inclined to his view that he had taken reasonable steps to remedy the problem and there was little more to be done. For example, as a result of the caretaker's discussion with the neighbour tenant, she had moved her sons' bunk beds to the opposite side of her apartment.

The tenant claims monetary damages of \$2,400 based on an extrapolation of loss of one and one-half hours of sleep and stress for 20 hours per month for six months at \$10 per hour and the loss of use of his bedroom for two and one-half months at \$8 per day.

Analysis

In limiting his claim to disturbances only after 11 p.m., and in attempting to find a resolution through communication, I find that the tenant has demonstrated some degree of degree of tolerance and consideration.

I further note that section 28(b) of the Act includes "freedom from unreasonable disturbance" among the matters that constitute a breach of a tenant's quiet enjoyment.

As a matter of note, a landlord does not have to personally breach the tenant's right to quiet enjoyment in order to be liable; simply allowing such a breach that is within the landlord's power to control can be enough.

However, I find that, in order to establish a monetary claim for breach of a material term of a rental agreement, the tenant would need to have advised the landlord in writing of the precise details of his concerns and that he considered those to constitute a material breach.

By the tenant not doing so, the landlord cannot be said to have been given fair notice of the magnitude of the tenant's concerns and the opportunity to respond accordingly, by

for example, conducting a more detailed investigation, and, if appropriate, providing a written warning to the offending tenant.

In as similar vein, the tenant submitted four items of evidence to the branch for the hearing, but did not provide copies to the landlord. One such piece of evidence was a letter from a tenant living below the unit in question and corroborating the applicant tenant's reports.

The applicant's claims of 10 and 12 year old boys play fighting from 11 p.m. to 1 a.m. frequently while their mother slept unaware in the same small apartment is highly unusual. It is understandable the landlord would question the claims and corroborating evidence would have strengthened the tenant's claim.

In the absence of formal written notice and the corroborating evidence to the landlord, I must dismiss the tenant's claim for monetary compensation. However, I find sufficient merit in the tenant's application that to entitle him to recover the filing fee for this proceeding from the landlord.

Conclusion

I hereby authorize and order that the tenant may recover the filing fee for this proceeding by withholding \$50 from his next rent due following receipt of this decision.

May 21, 2010