

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

A substantial amount of documentary evidence, audio video, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$6,024.39, and the applicant is also requesting that the respondent bear the \$100.00 cost of the filing fee that was paid for the application for dispute resolution.

Background and Evidence

The applicant testified that:

- It is his belief that the tenants in the rental unit above him are purposely making noise to bother him and disrupt his sleep.
- He has complained to the landlords about the problem however the landlords have failed to rectify the issue.

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- He at first thought the landlords were taking the problem seriously because they issued a Notice to End Tenancy to the tenants upstairs; however that notice was subsequently withdrawn.
- The upstairs tenants have continued to make noise to the point where he has found it nearly impossible to sleep and as a result has lost work due to sleep deprivation.
- He is now decided that he can no longer stay in this rental unit and therefore is moving at the end of this month.

The applicant is therefore requesting an order as follows:

Estimated cost of moving	\$500.00
Shaw cable reconnection fee	\$29.95
Lost work due to sleep deprivation	\$630.44
Compensation for stress and aggravation	\$3500.00
Two months' rent returned	\$1350.00
Filing fee	\$100.00
Total	\$6124.39

The respondent testified that:

- They originally received complaints from the applicant in November of 2009.
- At that time they spoke with the tenants upstairs and they thought the matter had been resolved because they heard nothing further from the applicant until May of 2010.
- After having further complaints from the applicant in May of 2010 they did initially serve a Notice to End Tenancy to the tenants in the suite above.
- That Notice to End Tenancy was subsequently rescinded after further investigation as they were not convinced that the upper tenants were the problem.

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- They had complaints from other tenants in the property about the applicant, and therefore they believe that it could be the applicant who is the problem and not the tenants above him.
- They also believe that the applicant may not be suited for this type of rental, as this is a three-story walk-up with hardwood floors and the tenant in the lower suite is bound to hear noises coming from the suite above.
- The tenants in the suite above have stated that they are not purposely making noise and in fact have attempted to mitigate the problem by making as little noise as possible. They even put an area rug in their bedroom.
- The tenants in the suite above also stated that the applicant has woken them from a dead sleep on numerous occasions by banging on the ceiling when they were making no sound whatsoever.

The respondent therefore believes that they have acted reasonably in this matter and that the tenant's application should be dismissed in full.

Analysis

It is my decision that the applicant has not established a claim against the respondent.

The applicant has claimed that the tenants above him are the problem however it is basically his word against the word of the tenants above him and that is not sufficient to establish a claim. The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met.

Further even if the tenants above him have purposely made noises, the applicant has admitted that he too has purposely made noises and therefore it appears that he may have actually exacerbated the problem and made it more difficult for the landlord to resolve.

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It is also my finding that the landlord has acted reasonably in this matter to try and resolve the issues between these two tenants and therefore he cannot be held liable for any losses the applicant claims to have suffered. The landlord is in the unenviable position of being stuck in the middle between two disputing tenants, both making claims about the other, and it is understandably very difficult for the landlord to know who if either is more at fault.

The applicant has supplied video/audio tapes as evidence of the noises he claims are being caused by the tenants above however I have no way of knowing how or when these tapes were recorded, and when listening to the tapes I have not heard anything that I would consider to be excessive noise.

I agree with the landlord that one must expect to hear noise from above in a three-story walk-up, especially when the unit above has hardwood floors.

Conclusion

This application is dismissed in full without leave to reapply.

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: October 25, 2010.

Dispute Resolution Officer