



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, RP, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution for an Order requiring the Landlord to make repairs to the rental unit, to comply with the Act, a monetary order for money owed or compensation for loss under the Act, and to recover the filing fee.

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

Preliminary Matter:

I note the hearing was quite lengthy and the written submissions quite long and detailed. I have given careful consideration of all oral and written evidence before me; however, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to the relief sought in his Application?

Background and Evidence

At the beginning of the hearing, the Tenant stated that the repairs had been done and he was no longer seeking an order requiring the repairs.

This tenancy began on April 1, 1990, now on a month to month basis, with a current monthly rent of \$1,086.00 payable on the first day of the month. A security deposit was not paid.

The Tenant's relevant evidence included a written submission summarizing the Tenant's claim for loss of quiet enjoyment, photographic depiction of notices posted by the Landlord on the premises, communication from the Landlord to the Tenant, notices of entry, communication from the Tenant to the Landlord concerning noise disturbances.

The Tenant's relevant testimony included giving affirmed testimony that beginning in March 2009 through October 2010, there was a series of events which led to the loss of his quiet enjoyment, including piano playing in an upper unit by three separate tenants, in violation of the noise bylaws, extreme noise from a neighbour, and loud, late parties in another adjacent unit. The Tenant testified that he always confirmed which rental unit the noise was coming from prior to making a complaint to the Landlord.

The Tenant testified that he made numerous attempts to address these problems with the Landlord, but was not successful in getting the noise reduced. The Tenant testified that there is no sound proofing in the building and the noise problems have escalated in recent years.

The Tenant testified that he has lived in the rental unit for twenty years, but the noise problems depriving him of his quiet enjoyment only started in 2009 when the Landlords did not do enough to ensure quiet premises. The Tenant testified that is has been since this time the Landlord allowed instrument playing in the rental units.

In support of the Tenant's financial claim of \$450.00 for loss of quiet enjoyment, he testified that he arrived at that figure by dividing it by twelve months and because the Landlord allegedly did nothing to stop the noise.

When queried, the Tenant said he objected to another tenant using a blender late at night.

Regarding the Tenant's claim for \$500.00 for the Landlord's alleged failure to maintain and repair the premises, the Tenant claimed this figure was arrived at by multiplying \$50.00 by ten months. The Tenant testified that on October 8, 2009, he noticed a substantial leak in the closet off the kitchen, which the Landlord did not timely repair, causing him a loss of use of the closet and aggravation in walking across exposed nail heads on the kitchen floor.

The Tenant claimed \$350.00 for having to clean the debris which developed and to use his own cleaning products.

The Landlord's relevant evidence considered included a written letter summarizing the Landlord's documents in defence of the Application, the tenancy agreement, copies of multiple communications between the parties concerning the issues of noise and repairs, notices of entry, copies of communication from the Landlord to other tenants which referenced the complaints made by the Tenant, copies of communication from the Landlord to the Tenant which referenced the complaints made against the Tenant by other tenants, and an email from the city by-law enforcement.

The Landlord's Agent, AW, gave relevant testimony which included affirmed testimony that the Landlord does not, nor has ever had a policy regarding playing musical instruments, and that any noise complaints are dealt with individually. The Agent further

testified there have been no other complaints regarding the piano playing, but that there have been complaints about the Tenant creating disturbances with other Tenants.

I saw evidence and heard testimony from the Landlord's Agent that the noise complaints were addressed with the other tenants each time one was made and that eventually the complaints forced multiple tenants to vacate the premises. The Agent testified that the steps taken include having the piano playing tenants place carpet under the piano to blunt the noise.

The Agent testified that the Landlord has taken all necessary steps to soundproof the building, but that the building is old, made of concrete, contains 44 units, has seven stories and is on a busy city street.

The Agent testified that in October 2009, when a substantial leak was noticed, the Landlord took immediate steps to repair the building. He further testified that a plumber fixed the leak in the Tenant's unit and the Tenant was advised to leave the wall open a few weeks to see if the problem was resolved.

The Landlord's Agent, IT, testified that he was to repair the wall and floor thereafter, but caught the flu, and was off work for seven days. After returning to work, Agent IT testified that he made attempts to gain entry to the rental unit to make the repairs, but the Tenant was uncooperative.

Agent IT testified that the closet in question was not used to any great extent by the Tenant as there was only one box in the closet when he arrived with the plumber and Agent AW testified that the loss of use was of little value as it was a 2' x 2' closet and that the Tenant did not cooperate in allowing access for repairs in a timely manner. Agent AW testified that there were no exposed nail heads, that there were indentations from nails under the vinyl flooring.

Both parties testified that a noise control by-law enforcement officer attended the premises for the purpose of determining the noise level caused by the piano playing.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In addressing the Tenant's Application as follows:

Awards for compensation are provided under sections 7 and 67 of the Act. In order to be successful in obtaining an award for compensation such as rent reduction, it is not enough to allege a violation of the Act, regulations or tenancy agreement by the other party. Rather, the applicant must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;

2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Loss of Quiet Enjoyment-\$450.00:

Section 28 deals with the Tenant's right to quiet enjoyment, in this case, freedom from unreasonable disturbance. Sec. 6 of the RTB Guideline deals with the tenant's entitlement to quiet enjoyment. In part the Act establishes rights including "freedom from unreasonable disturbance." The policy Guideline goes on to state that the modern trend for a determination of loss of quiet enjoyment is *frequent and ongoing interference by the landlord, or, is preventable by the landlord, he/she stands idly by while others engage in such conduct.*

I accept that the Tenant has heard noises from other rental units, but I find insufficient evidence that the noise and acts of the Landlord rises to the level which deprived the Tenant of his right to quiet enjoyment. The Tenant complained of a loud, late night party, but this was not frequent and ongoing. I do not find the noise and alleged disturbances, given the age, location, and character of the building, to be unreasonable and ongoing.

I find the Landlord took sufficient and reasonable steps to ensure the Tenant's right to quiet enjoyment, with the multiple letters to other tenants and notices posted, and I therefore **dismiss** his claim for quiet enjoyment.

Failure to Maintain and Keep the Rental Unit in Sound Repair-\$500.00

I find the evidence concerning this issue to be mostly disputed verbal testimony. It is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the Tenant, has the onus of proving, during these proceedings, that the claim is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail.

The Landlord's Agent testified that the closet was a small space and that at most, the Tenant was deprived of the loss of use for a month due to the Tenant's actions.

I do not find that the Tenant proved a diminished value of the rental unit to the extent claimed. Residential Tenancy Branch policy suggests that a dispute resolution officer may, however, award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I found evidence that the Tenant reported the closet damage in October 2009 and

that the Landlord repaired the damage in September 2010. I have considered nominal damages in relation to the compensation claimed by the Tenant and award him diminished value of \$10.00 per month for the twelve months the repair remained undone, in the amount of **\$120.00**. The Tenant may deduct this amount from the January 2011 payment of rent.

Cleaning and Use of Cleaning Products for the Rental Unit-\$350.00:

I find the Tenant submitted insufficient proof to meet steps 2 and 3 of the required elements for proving a claim for monetary compensation and I **dismiss** his claim for Cleaning and Use of Cleaning Products for the rental unit.

As the Tenant was largely unsuccessful with his Application, I decline to award him the filing fee.

Conclusion

The Tenant has established a claim for monetary compensation in the amount of \$120.00 and is allowed to deduct this amount from the January 2011 payment of rent.

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: December 1, 2010.

Dispute Resolution Officer