



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant – CNC, MNDC, OLC

For the landlord – OPC, MND, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant seeks to cancel the One Month Notice to End Tenancy for cause and seeks to obtain a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement, and an Order for the landlord to comply with the Act, regulations or tenancy agreement. The landlord seeks an Order of Possession, a Monetary Order for damage to the rental unit and to recover their filing fee.

The tenant served the landlord by registered mail on November 18, 2010 with a copy of the application and a Notice of the Hearing. The landlord served the tenant by registered mail on November 26, 2010 with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Preliminary Issues

At the outset of the hearing both parties stated that on November 25, 2010 they both signed a mutual agreement to end the tenancy on December 31, 2010. They both recognize that this agreement is binding and therefore their applications to cancel the Notice to End Tenancy and the application for an Order of Possession have been withdrawn.



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The remainder of the issues applied for will be dealt with at this hearing.

Issues(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

Both Parties agree that this month to month tenancy started on August 01, 2009. The tenant pays a monthly rent of \$840.00 which is due on the first day of each month. The tenant paid a security deposit of \$420.00 on June 24, 2009.

The tenant testifies that he has suffered a loss of quiet enjoyment of his rental unit due to the tenant living above him making excessive noise. The tenant has provided copies of letters sent to the landlord complaining of noise issues from unit 302 throughout his tenancy. The tenant states he suffered loud noises such as pounding on his ceiling, endless piano playing and amplified guitar. The tenant states in his submissions that there is also a sound such as from a printing machine or silk screen press. The tenant states he has complained to the management of the building and the Police but no action has been taken against this tenant. The tenant has provided three letters from friends which state they have heard excessive noise from the unit above the tenants when they have visited him at his unit. The tenant testifies that he seeks to recover \$300.00 per month for the 15 months of his tenancy to the sum of \$4,500.00 for the loss of his quiet enjoyment of his rental unit.

The tenant has also applied for an Order for the landlord to comply with the *Act* but when asked he was unsure why he had applied for this section.



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The property manager testifies that he has received many complaints from the tenant concerning noise coming from the tenants unit above his (302). He states the tenant is also complaining in a loud and aggressive manner and the property manager states in his submissions that he has gone to investigate the noise complaints and found the tenant in unit 302 to be quiet. He states he has asked the other tenants living round her if they are experiencing any noise from her unit and states that none of them are. The landlord approached the ex-tenant who used to live in the tenants unit to see if he had been disturbed by noise from the unit 302 during his tenancy. This ex-tenant has provided a written statement to say that during the three years of his tenancy he was not disturbed by the tenant above him. The neighbouring tenants have all written in to provide statements that they have not been disturbed by the tenant in 302 and when they have passed her unit they have never heard any loud noises from there.

The landlord has provided a letter sent to him by the tenant in unit 302 which discusses the alleged noise issues and which states the tenant in unit 202 bangs on the wall at the sound of the fan in her bathroom, her alarm clock, the whistle of her kettle, the sound of her blender, the rolling of a non electric carpet roller and her footsteps. This tenant states these are sounds of everyday life and the tenant below is sensitive to any noise she makes. This tenant has also provided a time line of complaints and what she was doing at the time this tenant in 202 complained about her.

The property manager testifies that after he served the tenant with the One Month Notice to End Tenancy the tenant was observed causing damage to a door in the stairwell. He states it looks like the tenant has carved into the wood of the door with what appears to be keys. The landlord seeks the sum of \$750.00 for this damage.

The tenant denies causing any damage to the door.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants claim for compensation for a loss of quiet enjoyment of his rental unit; in this matter, the tenant has the burden of proof and must show that he suffered a loss of quiet enjoyment of his rental unit. This means that if the tenants' evidence is contradicted by the landlord, the tenant will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The tenant has provided copies of letters sent to the landlord concerning his complaints about noise from the tenant in unit 302. The tenant has also sent in letters from some friends who states they have also heard noise from unit 302. However, the landlords' evidence of letters and statements contradict the tenants' claims and the tenant has provided no other corroborating evidence to satisfy me that the noises coming from unit 302 were anything more than normal living noise. Therefore, in the absence of any corroborating evidence, I find that the tenant has not met the burden of proof in this matter and his application for a Monetary Order is dismissed.

I further find the tenants' application for an Order for the landlord to comply with the *Act* is also dismissed. The tenant has provided no reason why this was included in his claim.

With regard to the landlords application for a monetary Order for damage to the door in the stairwell; again the burden of proof falls to the claimant in this matter and when the tenant disputes the landlords claims the landlord must provide corroborating evidence to meet the burden of proof that the tenant caused this damage to the door. In the absence of any corroborating evidence I dismiss this section of the landlords claim.

As the landlord has not been successful with his claim for a Monetary Order he must bear the cost of filing his own application.



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Conclusion

The landlord and tenant have mutual agreed to end the tenancy on December 31, 2010. No Orders will be made in rest of this agreement. The tenant must vacate the rental unit on or before December 31, 2010.

The remainder of the tenants' application is dismissed without leave to reapply.

The remainder of the landlords' application is dismissed 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: December 09, 2010.

Dispute Resolution Officer