



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RP, FF, O

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss under the Act, regulation or tenancy agreement - Section 67;
2. An Order compelling the Landlord to comply with the Act, regulation of tenancy agreement - Section 62
3. An Order compelling the Landlord to make repairs to the unit – Section 32;
4. An Order for recovery of the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord required to comply with any part of the Act, regulation or tenancy agreement?

Is the Landlord required to make repairs to the unit?

Background and Evidence

The tenancy began on August 1, 2010. Rent in the amount of \$700.00 is payable in advance on the first day of each month. The Tenant states that prior to entering the current tenancy, he was assured by the Landlord that although the unit was in a wood

frame building there would be no problems with noise. The Tenant states that for the first two months of the tenancy, the unit was quiet but that in October 2010, a new tenant moved into the unit above him and from that point on, the noise was constant. The Tenant states that the noise came from the upstairs tenant carrying out normal activities and walking on the hardwood floor and that the noise carried on throughout all hours of the day and night. The Tenant states that he informed the caretaker about this noise immediately and subsequently met and spoke with the Landlord's agent, sent a letter and email notes about the problem. The Tenant stated that the Landlord has not responded to his concerns and have done nothing to rectify the problem. The Tenant states that as he works from home, the noise has caused him lack of sleep, irritability and problems completing his work. The Tenant claims compensation for loss of quiet enjoyment in the amount of \$1,500.00 and an order requiring the Landlord to install a wall to wall carpet in the unit above him. The Tenant confirmed at the hearing that he was not making any other claims or requests.

The Landlord states that they have taken action on the tenant in the upper unit on other matters and expect that tenant to be moving out this month. The Landlord also states that they would be willing to offer the Tenant an upper level unit or to have area carpets placed in the upper level unit. The Landlord states that the building is over 50 years old, the unit floors are structurally sound and the hardwood floors are in good condition. The Landlord states they would not consider installing a wall to wall carpet in the upper unit as this would destroy a desirable feature of the unit.

Analysis

Section 28 of the Act provides tenants with an entitlement to quiet enjoyment of their rental unit. I accept the Tenant's evidence that he has lost some quiet enjoyment of the unit from the constant noise of normal activities from the upper unit. I also accept that the Tenant immediately took steps to inform the Landlord of the problem and that the Landlord did not respond in a timely manner, causing the loss suffered by the Tenant to be extended for a period of months. I find however that the amount claimed for these

damages are unreasonably high. Accordingly, I find on a balance of probabilities that the Tenant has established a claim for damages for a period of eight months in the amount of \$800.00.

Although the Landlord has sought to remedy the situation and provide the Tenant with quiet enjoyment by seeking an end of tenancy to the upper unit's tenant, given the evidence of the Tenant that normal activities cause noise from the hardwood floor, I cannot find that this remedy will suffice as when new tenants move in the problem may continue to exist if the new tenant conducts normal activities at night while the Tenant sleeps. I accept the Landlord's position that the installation of a wall to wall carpet will detract from the features of the units and find that the remedial suggestion by the Landlord to provide area carpets to the upper unit should any new tenant in the upper unit cause noise to be a reasonable response. Accordingly, I dismiss the Tenant's claim seeking an Order that the Landlord install a wall to wall carpet in the upper unit.

As the Tenant has established a claim, I also find the Tenant is entitled to recovery of the filing fee for a total entitlement of \$850.00.

Conclusion

I grant the Tenant a monetary award of \$850.00 pursuant to Section 67 of the Act and I authorize the Tenant to deduct this amount from future rent payable to the Landlord.

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: June 07, 2011.

Residential Tenancy Branch