



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Preliminary Issues

The landlord advised me there was an error in her name on the tenant's application. The parties did not raise any objections to the error being corrected and this has now been amended.

Introduction

This hearing was convened by way of conference call in repose to the tenants application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant both provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(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*?

Background and Evidence

Both parties agree that this month to month tenancy started on September 01, 2010. Rent for this unit is \$475.00 per month and is due on the first day of each month in advance.

The tenant testifies that he lives in a basement unit in this building. He states for over a year he has been unreasonable disturbed by the tenants residing in the upper unit. The tenant states these tenants have played loud music often late at night which has caused him to lose his quiet enjoyment of his rental unit. The tenant states he has called the police on many occasions and has provided police file numbers for six occasions between February 27, 2011 and September 30, 2011. The tenant states he has seen the police attend the upper unit on a few occasions but not all of them after he has made complaints. The tenant states when the police have spoken to the upper tenants those tenants do turn down their music but turn it back up again after the police have left. The tenant testifies he only makes a complaint or calls the police when it is very necessary. He states on September 29, 2011 the loud music continued until 06.00 am. Since that night the tenant states he has had to complain to the landlord on four other occasions.

The tenant testifies he has notified the landlord by text message each time he has been disturbed by the other tenants but she has failed to act on his complaints. The tenant states some parties go on until 05.00 a.m. or 06.00 a.m. and as he has to study and work he wants the landlord to take appropriate action and comply with the *Act* in order to protect his right to quiet enjoyment. The tenant seeks compensation from the landlord of \$650.00 for failing to take action against the other tenants to protect his quiet enjoyment.

The tenant testifies he has had four different roommates since the start of his tenancy two of which have also been disturbed by the upper tenants. He states these roommates have also sent text messages to the landlord to complain. However, neither of these roommates is available at this time to present their testimony. The tenant testifies he reached an agreement with the upper tenants that they would not party in the week but restrict it to

weekends. He states they complied with this until September, 2011 when they started to disturb him again.

The landlord testifies that she has acted on the complaints from this tenant. The landlord states when she gets a complaint from him by text she will phone the upper tenants and if they won't answer their phone she sends each of them a text and asks them that if they are partying to stop as they are disturbing other tenants. She states she has had messages back telling her that they are not partying or are not home at the time. The landlord states she has also e-mailed the other tenants residing in the basement units to ask them if they have been disturbed and they have all told her that they have not. The landlord testifies that one tenant who did live upstairs and was responsible for some noise has since moved out. The landlord states she went to the tenants unit after he made a complaint about noise but was unable to hear anything at that time. She states the tenant told her he had banged on his ceiling to make the upper tenants stop before the landlord got there. On that occasion the landlord states she went upstairs with the tenant and found two upper tenants eating their dinner with the television on quietly.

The landlord testifies that the incident on September 29, 2011 was caused when one of the upper tenants came back from a month long trip and was excited to be back and made some noise when she was organising her luggage and bags. The landlord states she spoke to this tenant who apologised for the noise. The landlord states she forwarded this message on to the tenant so he was aware of what was going on.

The landlord states all tenants are entitled to play music and watch television as long as it is done in a reasonable manner. The landlord states she has acted appropriately and posted notices telling tenants that there must be no parties in the house and no loud music after 11.00 pm. The landlord testifies she returned to the house after she received another complaint from the tenant on October 18, 2011 at 9.00 p.m. The landlord states she arrived at 10.00 p.m. and found the house was quiet. The landlord states she e-mailed the other basement tenants again to ask them if they had heard anything and states they replied that they had not heard any loud noise that night.

The landlord testifies she has no evidence to show that the upper tenants are disturbing this tenant and states she has acted reasonable in her obligations as a landlord.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter the tenant has the burden of proof to show that he the landlord has not taken action on his complaints that he has lost his quiet enjoyment of his rental unit due to the actions of the upper tenants.

The Residential Tenancy Policy Guidelines state: *The Residential Tenancy Act* and Manufactured Home Park Tenancy Act² (the Legislation) establish rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation,
- use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Policy Guidelines also states , in part, that frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

Having reviewed the documentary evidence and the verbal testimony it is my decision that the tenant has presented little documentary evidence to support his claim that the landlord has not acted appropriately or stood idly by while others engaged in disturbances that breached the tenants covenant of quiet enjoyment. The landlord argues that she has taken action for each of the tenant's complaints and has found no substance to his complaint.

As I have insufficient evidence to corroborate the tenant's claims that he has been unreasonably disturbed I find his application for compensation from the landlord has not met the burden of proof in this matter and is dismissed with leave to reapply.

With regard to the tenants application for an Order for the landlord to comply with the *Act*, I find in this matter that the tenant has provided insufficient evidence to show that the landlord has not complied with the *Act* regarding his complaints about noise from the upstairs unit. Consequently, this section of the tenants claim is also dismissed with leave to reapply.

As the tenant has been unsuccessful with his claim he must bear the cost of filing his own application.

Conclusion

The tenant's application is dismissed with 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 27, 2011.

Residential Tenancy Branch