

DECISION

Dispute Codes MNDC, OLC, LRE, FF

Introduction

This is an application filed by the Tenant for a monetary order for money owed or compensation under the Act, regulation or tenancy agreement, a request for an order for the Landlord to comply with the Act, to suspend or set conditions on the Landlord's right to enter the rental unit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have acknowledged receiving the evidence package submitted by the other party, I am satisfied that each has been properly served under the Act.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs are dismissed.

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows:

Both parties agree that the Tenant shall withhold \$624.00 one-time from April 2012 rent as re-payment of outstanding utility costs between the two parties. The Tenants agreed to withdraw the remaining portions of the monetary application and the request for the Landlord to comply with the Act, regulation or tenancy agreement and to suspend or set conditions on the landlord's right to enter the rental unit. The application for dispute shall continue for a monetary request for the loss of quiet enjoyment.

The above particulars comprise full and final settlement of all aspects of the dispute arising from this application for both parties.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for the loss of quiet enjoyment?

Background and Evidence

This Tenancy began on July 1, 2011 on a fixed term tenancy until June 30, 2012 as shown in the submitted copy of the signed tenancy agreement. The monthly rent is \$1,350.00 payable on the 1st of each month and a security deposit of \$675.00 and a pet damage deposit of \$325.00 was paid.

The Tenants are seeking a monetary order for compensation of \$1,000.00 for the loss of quiet enjoyment. The Tenants state that since the beginning of the tenancy that there have been numerous complaints of excessive noise. The Tenant seeks the monetary amount equal to the loss of 1 day per week since July 1, 2011 (8 1/2 months). The Tenant calculates this as the monthly rent of \$1,350.00 divided by 30 days, 4 days per month to the date of the hearing. The Tenants have approximated this to \$1,000.00 for 32 days/incidents. The Tenants state that they have made numerous telephone calls to the Landlord for complaints of excessive noise equal to this number of incidents. The Landlord disputes the Tenants claims by stating that she has only received 4-5 telephone call complaints of excessive noise from the Tenants from September 2011 to the beginning of March 2012. The Tenants have provided a disc with recordings of an example of excessive noise from the Landlords television and/or telephone calls. These recordings were not playable on the Residential Tenancy Branch players as the format provided by the Tenant are not supported by the Branch. The Landlord stated in the hearing that she would look into having a contractor install some insulation to alleviate the noise levels. The Landlord states that each time she has complied with the Tenant's concerns of excessive noise by lowering the volume on her television. The Landlord also states that she can at times hear excessive noise coming from the Tenant's unit originating from their television. The Landlord states that this is approximately a 32 year old house with little to no insulation separating the upstairs and downstairs units.

Analysis

As explained to the parties during the hearing the onus or burden of proof is on the party making the claim, in this case the applicant/tenant is responsible as they have made the application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other

evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I find that the Tenants have failed to establish their monetary claim of \$1,000.00 for loss of quiet enjoyment. Both parties have provided direct testimony which is in conflict. The Tenants have failed to provide any supporting evidence of ongoing noise issues with the Landlord. However, the Landlord has admitted to receiving 4-5 complaints of excessive noise. I find that there was an inconvenience to the Tenants. Section 32 of the Residential Tenancy Act speaks to a duty of care.

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

There is no proof of formal notice to the Landlord to rectify the noise issues. Both parties have acknowledged that the property is approximately 32 years of age and lacks a proper/sufficient noise separation/insulation. The Landlord has indicated a willingness to investigate possible noise insulation. On this basis, I order that Landlord explore and implement reasonable noise insulation to alleviate the Tenants concerns by April 30, 2012. This decision is formal notice to the Landlord to address the Tenants concerns.

The Tenant is entitled to recovery of the \$50.00 filing fee. I order that the Tenant may withhold \$50.00 one-time from the May 2012 rent due to the Landlord.

Conclusion

The Landlord is ordered to explore and implement reasonable noise insulation by April 30, 2012.

Both parties have mutually agreed that the Tenant may withhold \$624.00 one-time from the April 2012 rent due.

The Tenant may withhold one-time, \$50.00 from the May 2012 rent due to the Landlord for the recovery of the filing fee.

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: March 26, 2012.

Residential Tenancy Branch