



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, 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 – Section 67;
2. An Order that the Landlord comply with the Act – Section 62; and
3. Other.

I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Landlord did not attend the Hearing. The Tenant was 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 amount claimed?

Is the Tenant entitled to an Order requiring the Landlord to act?

Background and Evidence

The tenancy began on August 1, 1992. Rent of \$355.00 is payable monthly. Since the summer of 2011, the tenant in the unit above the Tenant has been making continuous and loud banging noises both during the day and over night. The Landlord was verbally informed of this problem when it first started and then sent several written complaints between September 28, 2011 and December 21, 2011.

During this time the Landlord failed to respond to the problem other than to offer the Tenant a new unit on the third floor of a building with no elevator. The Tenant, a war

veteran, is elderly, cannot walk, and since December has been recuperating from eye surgery and therefore does not consider this option to be fair or reasonable. Although the Landlord has informed the Tenant that he would be met with in January 2012 to discuss the problem, this meeting has never occurred. Further, the Landlord informed the Tenant that they were too busy to attend either the last hearing on this matter or today's hearing. It is noted that the last hearing on this matter resulted in a decision dated December 7, 2011 that provided leave to reapply for the Tenant on the same matter contained in the present application.

Since the onset of the disturbance, the Tenant has lost sleep and has had to increase his sleep medication from occasionally to regularly. Due to the loss of sleep overnight caused by the noise, the Tenant has had to try and sleep during the day consequently suffering a loss of day time enjoyment. Even during the day, the Tenant is disturbed by the noise from the upper tenant. The Witness, a friend of the Tenant, states that the Tenant has deteriorated over the past year and that the noise and disturbance to his sleep has affected him cognitively. The Tenant states that his recovery from surgery has also been negatively affected by the lack of sleep.

The Tenant claims compensation of \$2,400.00 and an order that the Landlord comply with the act and to act reasonably in response to the Tenant's complaints. The Tenant asks that the Landlord be order to communicate with the upper tenant about the noise and to provide the Tenant with outcomes of these discussions and to take any other action as necessary in order to ensure that the Tenant's complaint and the noise is addressed. The Tenant confirms that there is no other issue to be resolved at this Hearing and only wishes to have contentment back in his life.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including freedom from unreasonable disturbance. This section may be found to be breached where a landlord by inaction allows or permits interference by a source within the Landlord's power to control. Based on the undisputed evidence of the Tenant, I find

that the Tenant has substantiated a loss of quiet enjoyment by the actions of another tenant and that the Landlord has failed to act to ensure that the Tenant's right to quiet enjoyment is addressed and resolved. Given the undisputed evidence of the noise and how the noise has affected the Tenant, I find that there has been substantial interference with the Tenant's right of quiet enjoyment. Accordingly, I find that the Tenant is entitled to compensation of **\$2,400.00** and I Order the Tenant to reduce his rent as follows: for six months, commencing either May or June 2012, no rent is payable; for the seventh month, rent of \$85.00 is payable. Thereafter the rent will resume as normal.

Based on the undisputed evidence, I find that the Landlord has failed to act to ensure the Tenant's right to quiet enjoyment and further that the Landlord's offer of a third floor unit is completely inappropriate given the age and disabilities of the Tenant. I therefore Order the Landlord to immediately comply with the Act and to take such steps as reasonably necessary to ensure that the Tenant's complaint is addressed and to stop the noise of the upper unit from occurring.

Conclusion

I Order the Tenant to reduce rent by \$2,400.00 as set out above. I Order the Landlord to comply with the Act as set out above.

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: April 26, 2012.

Residential Tenancy Branch