



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

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

The tenant and landlord attended the conference call hearing along with Council for the landlord. The parties gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch. The tenant provided documentary evidence to the landlord however the landlord did not provide their documentary evidence to the tenant as the tenant has not provided the landlord with a forwarding address. The parties were asked if they want an adjournment to give the landlord opportunity to provide their documentary evidence to the tenant and council for the landlord requests that the hearing continues today and states the landlords documentary evidence will not be entered into evidence.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for Money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this month to month tenancy started in September, 2011. There was a one page tenancy agreement for the tenant to rent a room and share common areas of the basement of the landlord's home with the other tenants and landlord. Rent was \$350.00 per month and was due on the 6th day of each month.

The tenant testifies that his quiet enjoyment of his rental unit was not respected by the landlord and the landlord's family. The tenant states he suffered mental damage due to a lack of sleep generated by late night noise from the landlord's home above the tenant's room. This lack of sleep damaged the tenant's mental health and ability to work.

The tenant has provided documentary evidence detailing dates and times the tenant was allegedly disturbed by the landlord or the landlord's family.

The tenant seeks to recover the rent paid for nine months of his tenancy for this loss of quiet enjoyment to the sum of \$3,150.00. The tenant also seeks to recover the lost time the tenant took to prepare his application and for two visits to the Residential Tenancy Office. The tenant seeks to recover the sums of \$600.00 and \$1,050.00 for this work. The tenant seeks to recover the sum of \$180.00 for his gas and for fax and copy costs in dealing with the application.

The landlord disputes the tenant's claims. Council for the landlord states that the tenant has been extremely noise sensitive as the household noise generated from the landlord's home above the tenants room is simply everyday living noise. The tenant was aware this was a shared house when he rented the room and the tenant has documented that he can hear every little noise including muttering.

Council for the landlord states the tenant has called the police at least seven times and the police came to speak to the landlord but could not verify that any extra noise other

than normal living noise was coming from the landlord's home. On one occasion the police came at 2.00 a.m. and woke the landlord's family. The police were able to see that the landlord's family had all been in bed asleep as they had to answer the door in their pyjamas. The police spoke to Council for the landlord on June 12, 2012 and told Council for the landlord that in the police officers opinion the tenant's claims were exaggerated.

Council for the landlord states the tenant complained about every noise. The tenant complained about people walking upstairs, the noise of the landlord's central vacuum cleaner, the noise from the landlord's fridge and when the landlord played the piano at reasonable times. Council for the landlord states it is the tenant who has disrupted the landlord's life with these constant complaints. Council for the landlord calls into question the credibility of the tenant and states the tenant locked the door to the unit at the end of the tenancy, the tenant failed to return the keys and left a note for the landlord that informed the landlord the tenant had locked the door and had left some valuables in the room and would not return the keys until the landlord returned the tenants security deposit. The note also informed the landlord that if the landlord entered the room the tenant would seek compensation. Council for the landlord states the landlord was within his rights to keep the security deposit until the tenant had provided a forwarding address in writing and was entitled to enter the room at the end of the tenancy. The landlord entered the room with witnesses, found no valuables in the room and felt this was dishonest of the tenant.

The tenant agrees he left this note on the door to his rental room as the landlord had not returned the tenants security deposit.

The tenant cross examines the landlord and asks the landlord what the landlords point is and is the tenant lying about the noise. Council for the landlord replies and states the tenant is alleging there was noise and the landlord is stating that any noise was no more than normal living noise.

The landlord or Council for the landlord decline to cross examine the tenant.

Analysis

Section 28 of the Act states:

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant has the burden of proof to show that the landlord has caused unreasonable disturbances as described by the tenant that went above the normal living noise to be expected in a shared house. When one party's evidence contradicts the other party's evidence the party making the claim is required to provide corroborating evidence to meet the burden of proof. In this matter it is my decision that it is the tenant's word against that of the landlord and therefore the burden of proof is not met.

I also find the intent of the tenant is questionable due to the note left on the tenants door in which the tenant states he will seek compensation if the landlord enters the tenants room. The credibility of the tenant is also brought into question concerning this note and the honesty of the comments made in the note.

Consequently the tenants claim for compensation for a loss of quiet enjoyment is dismissed.

With regard to the tenants claim for money owed for loss of time to prepare the tenants application and for travel costs, fax and copy costs. There is no provision under the *Act* for these costs to be awarded and as I have also found the tenant is unsuccessful with his claim no further costs will be awarded to the tenant included the tenant's \$50.00 filing fee.

Conclusion

The tenant's application is dismissed in its entirety 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: August 03, 2012.

Residential Tenancy Branch