



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC

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 - Section 67; and
2. An Order that the Landlord comply with the Act – Section 62.

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

Issue(s) to be Decided

Is the Tenant entitled to the amount claimed?

Is the Tenant entitled to an order for the Landlord’s compliance?

Background and Evidence

The tenancy started in approximately 2005. Rent of \$375.00 is payable monthly. The Tenant rents a room in a building where the bathroom facilities are located in the hallway.

The Tenant states that for approximately three weeks in the spring of 2013, the Tenant lost quiet enjoyment of the unit when the Landlord allowed a film crew to conduct filming in the hallways of the building during the day. The Tenant states that while the filming only lasted 2-3 days, the set up and removal of the equipment each took another week. The Tenant states that he could not use the bathroom without a group of people

watching and that as there were dozens of people in the hallway during the production plus all their equipment, the Tenant, on occasion, had to wait to use the washroom. The Tenant states that he works late night shifts and lost sleep due to the production start time of 7:30 a.m. The Tenant states that that is seeking an amount equivalent to the industry standard in the amount of \$100.00 to \$125.00 per day for indoor filming and \$25.00 - \$40.00 per day for outdoor filming.

The Landlord states that while they are compensated by the film industry for the use of the building and filming, they do not compensate the tenants as this money is used for the upkeep of the building. The Landlord states that the film industry did provide each tenant in the building with a coupon for a subway sandwich. The Landlord further states that this was a one day shoot with 2 extra days for the set up and take down of the equipment and that as the Tenant never complained about any loss of quiet enjoyment the Tenant is not now entitled to any compensation. The Landlord denies that the Tenant's quiet enjoyment was disrupted. The Tenant states that the monies received by the Landlord are not being used to maintain the building but to renovate the units that are currently empty in the building.

The Tenant provided photos of the film shoot and equipment. The Landlord provided no written or documentary submissions.

The Tenant states that he does not seek anything specific in terms of the Landlord's compliance, just that they provide quiet peace and enjoyment of the unit and adequate compensation if they breach this requirement.

Analysis

Section 28 of the Act provides as follows:

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.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the lack of any supporting evidence from the Landlord that the film company spent only one day filming, I prefer the Tenant's evidence that the filming took place over 2-3 days. Given the photos of the Tenant, I also find that the set up and dismantling of the equipment would reasonably have taken much longer than a day or two. I therefore prefer the Tenant's evidence that the film industry was present in the building for approximately three weeks.

Given the photos and oral evidence of the Tenant in relation to the extent of the disruptions during this time, I find that the Tenant has substantiated a loss of quiet enjoyment of the unit for approximately three weeks, particularly in the common area. Although the Landlord gave evidence of compensation to the Tenant, given that this compensation came from the production company, I do not consider this any form of compensation from the Landlord who is obligated to provide quiet enjoyment. Although the Landlord argued that since the Tenant did not complain during the filming, the Tenant should not now be compensated, the Landlord provided no evidence that by

failing to complain the Tenant caused further damages or caused the Landlord a lost opportunity to mitigate the losses of the Tenant.

Regardless of industry standard rates which may or may not reflect adequate compensation for the individual circumstances in a disruption to a tenancy, I find that the Tenant has established compensation in an amount proportionate to the rent paid for the use of the unit and common areas and the proportionate loss of quiet enjoyment of that use and to therefore be entitled to **\$93.75**. This amount represents one third of the rent paid for the three week period of the disruption.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$93.75**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: July 12, 2013

Residential Tenancy Branch