



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RR MNDC OLC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

- a) An Order that the landlord comply with the Act, eradicate pests, make emergency and other repairs and provide services and facilities required by law pursuant to sections 32 and 33;
- b) A Monetary Order for \$2,000 as compensation or rent refund for rent paid when she could not live in the unit due to its unsafe condition, for repairs that were not done, for loss of her goods caused by the rat infestation and for her security deposit.

SERVICE

I accept that the landlord was properly served with the Application for Dispute Resolution hearing package and evidence. The landlord acknowledged receipt.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord did not fulfill his obligations under the Act to provide safe, sanitary housing to meet health standards and to eradicate pests? If so, has she proved that the landlord's act or neglect caused loss to her and her family? If so, what is the amount of compensation to which she has proved entitlement?

Should an order be issued to the landlord to make repairs?

Background and Evidence

The landlord attended the hearing. Both parties were given opportunity to be heard, to present evidence and to make submissions. A significant amount of oral evidence and documents from acoustical engineers was presented, not all of it is quoted but that which is relevant to the decision is noted.

It is undisputed that the tenancy began in October 2011. As the tenant was the first tenant in the building, it took some time for him to investigate an ongoing reverberation that significantly disturbed him. He discovered the noise was originating in the professional gym in the building and was attributed to the weight machines. The gym operates 7 days a week from 5a.m. to 11p.m. and during most of this time, the tenant states the noise is ongoing and significantly interfering with his peaceful enjoyment. He complained in writing in November but the problem continues to this date.

It is undisputed that the owner/landlord of this unit only owns two units in the building and does not have the ability to interfere in the gym's tenancy but the landlord has been working with the developer to address the issues. The developer has had a series of acoustical tests done, one in December, one in February and one in March and although there has been some improvement, the noise continues and there is no fixed end in sight as it appears solutions might be expensive and difficult. The landlord agrees that the developer needs to do something and perhaps should have foreseen the problems with renting to a gym where residential units could be affected by the ongoing noise of weight machines.

The tenant states he is away from his home approximately 30-40 hours a week and the noise ceases at 11p.m. but starts again at 5a.m. He has a fixed term lease and although the owner indicates a willingness to end the lease early, he stated that his own circumstances make it very difficult for him to move. He would rather stay but requests a reduced rent plus a rent rebate because of the significant interference with his peace and enjoyment.

On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Rebate of Rent and Compensation for Tenant for Loss of Quiet Enjoyment:

The onus or burden of proof is on the party making a claim to prove the claim. 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 the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, there is no conflict in the evidence. The tenant has claimed loss of quiet enjoyment due to failure of the landlord to deal with the issue of the noise and the landlord agrees that there is significant noise and although the developer is seeking solutions, the noise continues from the professional gym. The engineering reports also support the tenant's evidence.

I find based on the evidence that the tenant has endured a significant disturbance of his peaceful enjoyment and the problem has not been resolved, although the landlord has made efforts to work with the developer to do this. I find the noise of the weight machines continues sporadically for 18 hours a day and 7 days a week which is 126 hours in a week. I find the tenant is away an average of 35 hours a week and there is no noise from the machines for 6 hours a day (11 p.m. to 5a.m.) which is 42 hours of quiet time in a week. I find based on this evidence that the tenant has about 77 hours in the week when he is not being disturbed by the noise. As there are 168 hours in a week (24x7), the tenant is not disturbed for 45% of his time and likely he is not disturbed continually for the other 55%. Therefore, I find it reasonable that he should only pay

50% of his rent until such time as the problem is resolved to his satisfaction. This means his rent commencing in April 2012 would be reduced to \$750 a month until the problem of the noise from the weight machines is decreased and resolved to his satisfaction.

As the tenant first notified the landlord in writing of the noise problem in November 2011 and has been paying the full rent of \$1500 a month, I find him entitled to a further rebate of rent of \$3750 (\$750 a month times 5 months). This rebate will be applied to the future rent so the tenant will owe no rent for 5 months (until August 31, 2012) or until the noise problem is decreased and resolved to his satisfaction when he will pay the rent of \$1500 a month less any balance of rebate remaining. Should the landlord and tenant elect to end the tenancy early, any remaining rebate from the \$3,750 granted from November to March 2012 and not applied to rent reduction will be paid to the tenant in cash. The tenant did not request recovery of his filing fee so it is not awarded here.

Conclusion:

I HEREBY ORDER THAT THE TENANT IS GRANTED A REBATE OF \$3750 FOR THE MONTHS OF NOVEMBER 2011 TO MARCH 2012.

I HEREBY ORDER THAT THE TENANT'S RENT IS REDUCED TO \$750 A MONTH COMMENCING ON APRIL 1, 2012 AND CONTINUING UNTIL THE NOISE REVERBERATION FROM THE WEIGHT MACHINES IS DECREASED AND RESOLVED TO HIS SATISFACTION.

I HEREBY ORDER THAT THE RENT REBATE OF \$3750 BE APPLIED TO FUTURE RENT SO THE TENANT WILL OWE NO RENT FROM APRIL 1, 2012 UNTIL AUGUST 31, 2012 OR UNTIL THE NOISE PROBLEM IS DECREASED AND RESOLVED TO HIS SATISFACTION.

SHOULD THE LANDLORD AND TENANT MUTUALLY AGREE TO END THE TENANCY EARLY, I HEREBY ORDER THE LANDLORD TO PAY OUT IN CASH TO THE TENANT ANY REMAINING REBATE THAT HAS NOT BEEN APPLIED TO THE MONTHLY RENT.

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: February 25, 2014.

Residential Tenancy Branch