



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

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;
2. An Order for the Landlord to comply - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each 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 that the Landlord comply?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy started on August 1, 2013 with rent of \$1,050.00 payable monthly. The Parties signed the tenancy agreement for a lower unit in a house without the Tenants being informed that renovations were currently being done to the upper part of the house and would continue during the tenancy. The Landlord provided the Tenants notice of this ongoing work on the Tenants’ move-in date indicating a completion time of fall 2013.

The Tenants state that had they known about the renovations that were to be done, they would not have signed the tenancy agreement as they had an infant that required periodic naps during the days. The Tenants state that work on the upper unit was generally done on week-ends as the Landlords worked during the week. The Tenants state that they were disturbed by the renovation noise such as hammering, scraping and drilling sounds and were more than inconvenienced with their infants sleep requirements. The Tenant states that as one of the Tenants work out of the home, the week-ends were their time to enjoy being at home. The Tenant claims \$721.44 based on a per diem amount for work done on the week-ends from the onset of the tenancy to and including January 2014.

The Landlord states that the work done created merely an inconvenience on the renovation days and that on some of those days they only worked a couple of hours stopping at noon. The Landlord states that they always provided notice of when they would be working and expected the noise to be too loud for the Tenants so that the Tenants could make alternate arrangements for that time period. The Landlord states that this occurred maybe 7 times.

The Tenant states that although the work above them has not occurred since January 2014, they are concerned that the Landlord will again start work and the Tenant claims an order that the Landlord comply with the Tenant's right to quiet enjoyment of the unit.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to reasonable privacy, freedom from unreasonable disturbance. 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. Although the Landlord argues that the Tenants were subjected only to a mere inconvenience, the undisputed evidence shows that the Tenants were not given a chance to consider whether they would endure any inconvenience, including a mere inconvenience at the time of signing the tenancy agreement. This non-disclosure until

after the signing of the agreement tends to support the Tenants claim that the work being done was noisy and disturbing. I find therefore on a balance of probabilities that the Landlord breached the Tenant's right to quiet enjoyment. I also find that the amount claimed by the Tenants to be a reasonable sum and that the Tenants are therefore entitled to **\$721.44**. As the Tenant's application has met with success I find that the Tenants are also entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$771.44**. The Tenants may deduct this amount from future rent payable in full satisfaction of the entitlement.

As there is no indication that the Landlord is currently out of compliance but should the Landlord act out of compliance with the Tenant's right to quiet enjoyment in the future, I dismiss the request for an order that the Landlord comply with leave to reapply.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$771.44**. 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: June 16, 2014

Residential Tenancy Branch

