



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, RR

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 for a rent reduction – Section 65.

The Landlord 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 monetary amounts claimed?

Is the Tenant entitled to a rent reduction?

Background and Evidence

The tenancy started in either 2006 or 2008. Rent of \$800.00 is payable monthly.

The Tenant states that for a period of 38 consecutive days ending July 31, 2014 the Tenant was greatly disturbed by the noise from renovations done in the unit below her unit. The Tenant states that the noise consisted of hammering, banging, and sawing. The Tenant states that a fan was also left on and that paint fumes came into her unit causing her to feel ill. The Tenant states that the noise started at 7 or 7:30 each day and lasted to 6 or 7 p.m. The Tenant states that on at least 6 or 7 occasions, the noise lasted as late as 10:00 p.m. The Tenant states that she was forced to leave her unit almost daily to avoid the noise. The Tenant states that the Landlord was informed of the noise but failed to remedy it. The Tenant argues that by allowing the noise the Landlord breached the Tenant’s right to quiet enjoyment of her unit and claims the amount paid in rent for the 38 days.

The Landlord states that the Tenant did complain about the noise and that following this complaint the Landlord instructed his workers to work only between 8 a.m. and 6 p.m. The Landlord states that latex paint was used, that the Landlord has the right to made renovations to his rental units and that no compensation was offered to the Tenant for the disturbance during the day. The Landlord states that there was only about 4 days of loud noise that would have disturbed the Tenant. The Landlord agrees that a saw and other tools were used but not to the extent claimed by the Tenant.

The Tenant states that every year of the tenancy over the winter months the heat would fail repeatedly and that this was not repaired until April 2014. The Tenant states that the Landlord was informed when the heat was not working. The Tenant states that she was had to heat the unit with her stove causing an increase in utility costs. The Tenant provided a copy of a print out on the monthly and yearly consumption of the utility. The Tenant claims compensation of \$400.00.

The Landlord does not dispute that there were problems with the heating system but that it was always repaired within the same day except for a couple of times when parts had to be ordered in and then the heat would be out for a couple of days. The Landlord states that the heat was not off continually and that the Tenant never complained to the Landlord. The Landlord states that no other tenants complained either.

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. .

Based on undisputed evidence of the time period for construction, considering the tools being used and the Tenant's credible evidence of the ongoing nature and level of noise, I find that the Tenant endured unreasonable noise during daytime hours from the unit below for 38 days and is entitled to compensation for this period. Considering that the Tenant had full enjoyment of the unit over the evenings and night, at least for a majority of the time spent under construction, I

find that the Tenant has only substantiated a loss equivalent to 50% of the rent paid for the period of 38 days in the amount of **\$506.54** ($\$800/2/30 \times 38$).

Based on the Landlord's evidence that the heat was not available for at least a few days during the tenancy over the winter months but noting that the Tenant's evidence of utility usage does not indicate an increased cost to the Tenant, I find on a balance of probabilities that the Tenant had to use her stove to heat her unit and that the Tenant has therefore substantiated a nominal amount of **\$100.00** for the inconvenience caused by the periodic loss of heat over the tenancy for a total entitlement of **\$606.54**. I order the Tenant to reduce either December 2014 or January 2015 rent payable by this amount.

Conclusion

I order the Tenant to reduce future rent as set out above by \$606.54.

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: November 24, 2014

Residential Tenancy Branch

