



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 353806 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72; and
- other unspecified remedies.

The landlord's agent, MW ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she is the building manager for the rental building and that she had authority to represent the landlord company named in this application, as agent at this hearing. The landlord's witness, "JC," testified at this hearing and both parties were given an opportunity to ask questions and to cross-examine the witness.

The tenant testified that she served the landlord with the tenant's application for dispute resolution hearing package ("Application") on January 8, 2015, by leaving a copy in the landlord's mailbox. The landlord confirmed receipt of the tenant's Application. Although this is not one of the methods of service outlined in section 89 of the *Act*, the landlord confirmed receipt and she reviewed the documents. Accordingly, I find that there is no prejudice to the landlord in considering the tenant's Application and I find that the landlord was sufficiently served for the purposes of the *Act*, as per section 71(2)(c).

During the hearing, the tenant withdrew her application for "other" unspecified remedies. Accordingly, this portion of her application is withdrawn.

Issues to be Decided

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord testified that this tenancy began on July 1, 2014, for a fixed term of one year, after which it would transition to a month to month tenancy. Monthly rent in the amount of \$900.00 is payable on the first day of each month. A security deposit of \$450.00 and a pet damage deposit of \$450.00 was paid by the tenant and the landlord continues to retain both of these deposits. A written tenancy agreement was provided for this hearing. The tenant continues to reside in the rental unit. The landlord took over control of this building from the former landlord, in November 2014.

A mutual agreement to end tenancy was signed by both parties on December 31, 2014, for an end to this tenancy at 12:00 p.m. on January 31, 2015. A copy of this agreement was provided for this hearing. The tenant stated that she intends to leave the rental unit on January 31, 2015, as per the mutual agreement.

The tenant testified that she was seeking a monetary order for compensation in the amount of \$500.00 for her loss of quiet enjoyment while residing in the rental unit. The tenant stated that she is seeking \$100.00 per month for 5 months of disturbance, which includes her cost of moving to another rental unit, as well as to account for the \$110.00 per month higher rent rate that she will be paying at her new rental unit. The tenant also seeks to recover the \$50.00 filing fee for her Application, from the landlord.

The tenant testified that her neighbor, JC, who resides directly next to the tenant in the rental building, has disturbed her quiet enjoyment with his loud conversation and loud music. The tenant indicated that this behaviour occurred from August to December 2014. The tenant stated that the behaviour occurred mainly in the afternoon, but it also occurred approximately 5 times from 11:00 p.m. to 12:00 a.m. The tenant indicated that she had no noise complaints regarding JC between 12:00 a.m. and 9:00 a.m., with the exception of one incident that occurred at 4:00 a.m. The tenant stated that she advised the landlord on numerous occasions that it did not matter when the unreasonable noise was occurring, as the local City bylaw and her tenancy agreement did not outline any time constraints, whether during the day or at night, when quiet enjoyment can be disturbed. The tenant did not provide a copy of this bylaw, with her Application. The

tenant stated that there was a period of calm and quiet between August 26 and November 1, 2014, where she did not make any complaints to the landlord. She stated that if there was any disturbing behaviour by JC during this time, she would bang on the wall to notify JC about his disturbance and the noise would usually stop.

The tenant stated that her sleep was disturbed and she had difficulty working from home during the day because of JC's noise disturbances. She indicated that she felt anxiety and fear, as a result of JC's threatening behaviour. The tenant stated that she did not suffer any other medical effects and did not see a doctor for these concerns regarding JC. The tenant stated that she called the police 4 times to report this noise disturbance. The tenant indicated that the police did not attend on 3 occasions on November 13 and 28 and December 4, 2014. She stated that because she called the non-emergency police line, she received phone calls from the police 1-2 hours after reporting, such that the noise had already stopped. The tenant stated that the landlord told her to call the police to deal with noise complaints regarding JC. The tenant stated that a police sergeant told her that the landlord should be dealing with noise complaints and that he had unsuccessfully tried to call the landlord to advise her of this fact.

The tenant provided the landlord with 5 written complaints, ranging from August to December 2014, regarding this behaviour. The tenant also spoke verbally with the landlord regarding her complaints. The landlord acknowledged receipt of all of the tenant's written complaints as well as speaking to the tenant verbally. The tenant stated that when she spoke with the landlord, she was advised that there was nothing that the landlord could do about the noise during the day, and that the tenancy agreement only indicated that quiet was to be maintained between 11:00 p.m. and 9:00 a.m.

The tenant indicated that her first written complaint was given to the former landlord on August 25, 2014. The tenant stated that she did not keep a copy of this complaint and therefore, she was unable to provide it for this hearing. She stated that the complaint was regarding an incident on August 24, 2014, wherein JC was yelling at another occupant below him, from his balcony. The tenant indicated that this happened at 4:00 a.m. and she was awakened by the noise. She stated that JC was also yelling in his own unit and the hallway that he would fight anyone who came to his door. The tenant indicated that she called the police on the emergency line, out of fear for her safety, but when the police attended, they could not enter the building without the tenant providing access, so they left. The tenant stated that she talked to the former landlord when she handed her written complaint to her, and this former landlord indicated that others had complained about JC as well. The tenant indicated that she received no response from the former landlord after her written complaint. The former landlord was then replaced

by the current landlord, in November 2014. The tenant did not produce the former landlord as a witness at this hearing.

The tenant provided a copy of her November 3, 2014 letter with her Application, which she says she gave to the landlord and received no response. This complaint was regarding a loud conversation on November 2, 2014, that JC was having with another person in his unit, which caused the tenant to awaken from her sleep. The tenant testified that she banged on the wall to alert JC to quiet down. She stated that JC then came over with his friend and banged on the tenant's door, asking her to open her door so he could speak to her. The tenant threatened to call the police and JC then left the tenant's door. The tenant indicated that she did not call the police because she was afraid to leave her rental unit in order to let the police into the building. JC testified that on November 2, 2014, he was having a conversation with his friend and he was not being loud. JC indicated that the tenant pounded violently on her wall and he went over to the tenant's rental unit to inquire as to why she was pounding on the wall. JC stated that he was unsure as to whether the tenant had thought that JC caused any noise or whether it might have been someone downstairs. JC stated that the tenant screamed through her rental unit door, that she would call the police, so JC left.

The tenant provided copies of her December 4 and 5, 2014 letters with her Application, which she says she left in the landlord's mailbox. The complaints discuss loud music and noise by JC. They also ask for a written response from the landlord, regarding the action being taken to deal with JC. The tenant received a letter from the landlord's daughter on December 15, 2014, which states that the tenant's complaint was received, JC would be receiving a breach letter and the next written complaint would result in a 30 day notice. The letter asked the tenant to continue providing written complaints if the disturbances continued. The landlord stated that her daughter, "R," wrote this letter to the tenant when the landlord was sick but that R was not authorized to write it.

The landlord testified that she provided JC with a written breach letter on December 15, 2014, as a result of the tenant's complaints. JC testified that he received this letter on December 15, 2014 and confirmed that it referred to noise disturbance and threatening behaviour. Both the landlord and JC testified that this breach letter indicated that JC's conduct was affecting the safety, welfare and comfort of other tenants and that a breach of the tenancy agreement would result in a 1 month notice to end tenancy. The landlord stated that she showed the tenant's written complaints to JC, but did not allow him to read the complaints, for safety and confidentiality reasons. The landlord stated that she verbally advised JC at this time, that his loud noise and music was affecting the tenant and asked him to keep his music and noise level down. The landlord indicated that JC told her that he would keep his noise level down.

The tenant provided a final letter to the landlord on December 27, 2014, regarding loud music, which she says she expected to result in JC's eviction with a 30 day notice. The tenant indicated that she tested her own music at a "reasonable level" against JC's music, closed her rental unit door and went into the hallway, where she noticed that her own music was inaudible, while JC's music was audible down the hallway.

The tenant stated that she initiated the mutual agreement to end tenancy with the landlord because the landlord threatened to evict her for complaining about JC, and she wanted to end her fixed term tenancy early. The landlord confirmed that she signed the mutual agreement, at the tenant's request. The landlord denied threatening the tenant with eviction. The tenant stated that JC was the main reason she was leaving, but also that the rental building was not the same as when she moved in, as it was very dirty and in bad shape. The landlord stated that she was not told by the tenant that she was vacating the rental unit because of JC's behaviour. The landlord testified that she thought the tenant was leaving the rental building to cause a financial loss for the landlord. The landlord stated that she did not want the tenant or JC to leave the rental building and that she had wanted them to resolve their issues. The landlord indicated that she thought both the tenant and JC had personal problems with each other.

JC testified that he plays music in his rental unit, but not at a loud or unreasonable level. He stated that he does not play music past 11:00 p.m. and he is aware that his tenancy agreement calls for quiet between 11:00 p.m. and 9:00 a.m. JC also testified that on one occasion, he could hear the tenant yelling very loudly at the landlord in the hallway; this incident was also confirmed by the landlord. The landlord testified that the tenant was very pushy and yelled at the landlord. The landlord indicated that the tenant wanted JC evicted from the building but that the landlord could not evict JC without a sufficient reason.

The landlord confirmed that she did not receive any other complaints regarding JC from any other occupants in the rental building. The landlord stated that she spoke with JC's other neighbours and they were surprised regarding the tenant's complaints about noise, as they had not experienced the same issues. The landlord indicated that she did not personally hear any loud music or conversation occurring in JC's unit, when she walked by his unit. The landlord stated that she only heard a vacuum cleaner, not music, on one occasion when she passed by JC's unit. The landlord stated that she did not believe the tenant's complaints regarding JC, to be credible.

Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters, notes and agreements, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. In this situation, the tenant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the landlord caused her damage or loss, which affected her right to quiet enjoyment.

Section 28 of the *Act* deals with the tenants' right to quiet enjoyment:

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

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;...*

Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*.

The tenant did not produce any witnesses to testify at this hearing. The tenant did not provide any police reports or witness statements, for this hearing. The tenant did not provide any other independent evidence from other witnesses, that JC was engaging in loud noise or conversation in his unit. The tenant stated that on August 25, 2014, JC was yelling at another occupant in the building, but she did not produce this occupant as a witness to testify regarding these events. The tenant did not produce the former landlord as a witness to verify the tenant's August 2014 complaints or to verify the complaints apparently made by other occupants in the building, to the former landlord.

Although the tenant may have been frightened by this event, she was not directly threatened by JC and she was not speaking directly to JC at this time.

The tenant's complaints regarding unreasonable noise occurred mainly during the afternoon hours. The tenancy agreement states that all occupants should maintain quiet between 11:00 p.m. and 9:00 a.m. under the "conduct" clause on page 2 of the agreement. The tenant indicated that only 5 complaints of noise by JC were from 11:00 p.m. to 12:00 a.m. JC denied playing music after 11:00 p.m. There were no complaints between 12:00 a.m. and 9:00 a.m. While the tenancy agreement also states that loud music or conversation should not disturb peaceful enjoyment at any time, both JC and the landlord testified that there was no such loud music or conversation occurring in JC's rental unit. The tenant did not produce independent witness evidence to establish otherwise.

A reasonable level of noise is expected in a multi-unit residential building during the day. The tenant indicated that this was a commercial and a residential building. However, the tenant occupies the residential portion of the building and indicated that this is a residential tenancy. Occupants are permitted to engage in conversation and play music, at a reasonable level, during the day. JC admitted to playing music, though not at an unreasonable level. The tenant did not suffer any medical effects as a result of JC's behaviour. The tenant indicates that she was unable to work from home during the day. However, when working from a home rather than in another setting, the tenant should expect different levels of noise, given that this is a residential environment.

In any event, I find that the landlord took reasonable steps to address the tenant's written and verbal complaints. The landlord spoke with JC and provided him with a breach letter regarding his conduct, as a result of the tenant's complaints. This was despite the fact that the landlord did not believe the tenant's complaints to be credible. The landlord was assured by JC that no unreasonable noise was occurring. The landlord stated that there were no other complaints from other occupants regarding noise from JC and that his neighbors were surprised by the tenant's complaints regarding noise from JC. The landlord did not personally witness any loud noise from JC, when she walked by his unit. The landlord stated that she did not threaten to evict the tenant and that the tenant initiated the mutual agreement to end tenancy. The tenant admitted that she was also moving for other reasons, aside from her complaints regarding JC. The landlord indicated that she did not have a sufficient reason to evict JC.

On a balance of probabilities, I find that the tenant has not met her burden of proof to show that the landlord caused her damage or loss, which affected her right to quiet enjoyment, and that the landlord failed to take appropriate action to follow up on the tenant's complaints about JC. Therefore, I dismiss the tenant's application for a monetary order for money owed or for compensation for damage or loss under the Act, regulation or tenancy agreement.

As the tenant was unsuccessful in her Application, she is not entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

The tenant's application for a monetary order for money owed or for compensation for damage or loss under the Act, regulation or tenancy agreement, is dismissed.

The tenant is not entitled to recover the \$50.00 filing fee from the landlord. The tenant must bear the cost of her own filing fee.

The tenant's application for other unspecified remedies is withdrawn.

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: January 28, 2015

Residential Tenancy Branch

