# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

**MNDC, FF**

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage and loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

At the start of the hearing the tenant's application was reviewed in order to determine the nature of the claim. The tenant confirmed he has requested compensation for the loss of quiet enjoyment. The application included references to matters related to the landlord's failure to provide a copy of the condition inspection report, a time-delay in obtaining a key, a faulty lock and a request made at the end of the tenancy that he putty holes cause by art that had been hung.

The tenant stated that the claim was actually made as the result of alleged noise disturbances; and that the balance of the submissions made was meant to reflect on the landlord's character.

I confirmed that the parties signed a mutual agreement ending the tenancy effective April 30, 2014. Given the mutual agreement made terminating the tenancy the tenant withdrew the portion of the claim for a moving van; $283.47.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of $3,800.00 for the loss of quiet enjoyment?

Background and Evidence

This 1 year fixed-term tenancy commenced on September 15, 2013; total rent and fees was $975.00. A security deposit in the sum of $475.00 and a pet deposit of $50.00 were paid.

The tenancy ended effective April 30, 2014, by mutual agreement. The tenant said that his tenancy was a difficult experience, so he decided to end the tenancy. The deposits have been returned to the tenant.

The tenancy ran for 8 months; the tenant is claiming total rent paid for the equivalent of one-half of that time. The tenant's written submission stated that the purpose of his application is to ensure that future tenants are treated fairly, as the landlord has breached the legislation and the required code of ethics. The tenant feels the landlord needs to be held accountable, in that the tenant's experience was not unique.

The tenant rented a basement suite; the landlord and her son lived in the upper portion of the home. The tenant was told the unit would be quiet; however, the landlord's son made an unreasonable amount of noise throughout the day and night and the landlord's dog barked constantly when she was out of the home. As the result of noise the tenant was able to sleep through only ¼ of the nights he was at the rental unit. The tenant stated he is not overly sensitive to noise but is a teacher and at times had to be up early in the morning for work.

The tenant supplied a list of all dates and times he was disturbed; commencing September 20, 2013 to March 21, 2014. The tenant said he created this list on his computer, throughout the nights, at the times he was disturbed. There were 2 notations in September 2013; 1 in November, 2 in December 2013; 8 in January 2014; 9 in February 2014 and 2 in March 2014. The tenant then ceased creating a record of the disturbances. The tenant could not provide the dates he may have discussed these alleged disturbances with the landlord, but said he had repeatedly talked to the landlord and her son.

The tenant provided copies of emails sent between the parties in relation to noise complaints. They were as follows:

- September 20, 2013: 2:28 a.m. regarding talking and banging above his bedroom;
- September 23, 2013: from the landlord's son, thinks his chair may be causing noise, promises the chair will be replaced with something more quiet; the

landlord responded saying she was doing what she could to reduce the sound of someone who lives above the tenant, she suggested earplugs; tells tenant her son is aware of the concern and that the noisy chair will be replaced; the tenant replied agreeing the landlord was doing all she could and that he had used earplugs and was able to sleep;

- January 3, 2014 1:01 a.m.: report of noise from a TV or a game and banging;
- January 24, 2014 1:49 a.m. to landlord's son; separate email to landlord asking to end tenancy early;
- February 23, 2014: request from the tenant that he meet with the landlord and her son as he was being disturbed at night; landlord replied saying she would be happy to meet and asked for a time. The tenant said most weeknights would work but the tenant said he might be teaching or out elsewhere.

The tenant said that he was not aware he had the right to seek out a remedy early in the tenancy, by submitting an application for dispute resolution. Later in the hearing I referenced an April 30, 2014 email in the landlord's evidence. This email was sent by the tenant to the landlord, telling the landlord he could prove she was in violation of several laws and that he had taken 2 landlords to mediation and had been successful in each application. The tenant said that he had only attended prior hearings in order to retrieve his deposit and that it did not occur to him that he could submit a claim for loss of quiet enjoyment.

After offering to meet with the landlord, to explore solutions, the tenant declined to do so. He believed the landlord would manipulate the process and that no solution would result.

The landlord then responded to the tenant explaining that in the last eleven years 2 other tenants had made a noise complaint. One was solved by the placement of a rug upstairs and no on-line gaming after 10 p.m. The reports of noise had then ceased. The landlord said she did take the issue seriously but that the tenant appeared to be a part of the problem. The landlord asked if they could meet, but the tenant declined to try a re-enactment, so the source of the reported noise could be identified. The landlord determined they had reached an impasse; she had done what she could, the tenant did not want to meet to try to re-enact the noise and denied he was sensitive to noise.

The landlord testified that she prefers to communicate with tenants via email as it gives her an accurate record, which assists her in managing the tenancy. During this tenancy the landlord received over 50 emails from the tenant and only 5 referenced a problem with noise. The tenant did not talk with the landlord about noise problems and never told her that the dog barked when she left the home. The emails that were sent did not mention the dog.

The landlord said that when she reviewed the tenant's hearing documents she became confused and unsure of the basis of his claim and what it was meant to address. The landlord said the tenant referenced the noise, the landlord's behaviour and protection of

future tenants. The landlord said the tenant wrote that it was her behaviour on the final day of the tenancy that resulted in his application, which was made 4 months after the tenancy had ended.

The landlord provided copies of a letter from several past tenants; attesting to a high degree of satisfaction during their tenancies.

Analysis

Section 28 of the Act provides:

***Protection of tenant's 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;*
> *(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*

The tenant has requested compensation equivalent to one-half of the rent paid over the 8 months of the tenancy as the result of alleged noise disturbances.

It is important to note that in a claim for damage or loss under the Act, the applicant, in this case the tenant; has the burden of proving his claim. The standard of proof is on the balance of probabilities. The evidence supplied by the tenant must satisfy each of the following tests:

[1] Proof that the damage or loss exists,

[2] Proof that this damage or loss happened solely because of the actions or neglect of the landlord in violation of the Act or agreement

[3] Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

[4] Proof that the tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

From the evidence before me I find that the tenant may well have experienced some disturbances during this tenancy. I do find that some of the sounds heard were likely the result of normal day-to-day living; whether caused during the day or at night. However, I find the tenant has failed, on the balance of probabilities, to prove that those disturbances reported to the landlord were of a frequency and degree that would support compensation equivalent to one-half of rent paid. I found the tenant’s

submission focussed on a need to somehow make the landlord accountable, rather than a legitimate claim for a real loss suffered.

I have based this assessment on the absence of any record of complaints made, outside of the small number of emails supplied in evidence. The list of disturbances presented by the tenant was not supported by any proof that he spoke to the landlord or made any effort to mitigate the claimed loss he allowed to accumulate during the tenancy.

I found the tenant's submission that he did not know he could submit an application for dispute resolution during his tenancy difficult to accept; given the email evidence supplied by the landlord in which the tenant stated he had taken 2 previous landlord's to hearings and won. The tenant is a teacher, which leads me to suspect he would not have misunderstood his right to seek a remedy; given his 2 previous hearings.

Therefore, in the absence of any evidence that the tenant properly notified the landlord of the many dates he submits he was disturbed I find he ignored the requirement of section 7 of the Act; that he take steps to minimize the considerable loss he has now claimed and that the application is dismissed.

Conclusion

The application and claim is dismissed.

This decision is final and binding and 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: March 20, 2015

Residential Tenancy Branch