



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement and a monetary order for money owed or compensation for damage or loss.

The tenant and the landlord's representatives attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary matter-The tenant, at the beginning of the hearing, had a witness in attendance; however, that witness telephoned into the hearing on a separate line. When informing the witness that he was not allowed to participate in the hearing until his testimony was needed, the witness agreed I could call him when needed. The witness then disconnected from the hearing, without informing me that he was calling from a pay phone. The tenant submitted that the witness was not reachable thereafter.

The tenant's witness had submitted a written statement contained in the tenant's evidence, and the tenant agreed that this statement would reflect the witness' statement at the hearing. I therefore determined that the tenant was not impacted negatively by the witness' inability to attend the hearing.

Preliminary matter#2-The tenant requested an adjournment of the hearing, as three witnesses he listed in his evidence were not present at the hearing; the tenant provided no explanation as to why they were not present.

In considering whether or not to grant the tenant's request for an adjournment, Section 6.3 of the Rules gives the Arbitrator authority to adjourn the dispute resolution proceeding to a later time at the request of either party or of the Arbitrator's own initiative.

Under Section 6.4 (b) I considered whether or not the purpose for which the adjournment is sought will contribute to ensure a fair, efficient and consistent process for resolving this dispute and the possible prejudice to each party.

I declined the tenant's request for an adjournment, as there was no assurance that the witnesses would be present at a future hearing or explanation as to why the witnesses were not present for this hearing.

Issue(s) to be Decided

Is the tenant entitled to an order for the landlord's compliance with the Act, the Regulation, or tenancy agreement and monetary compensation?

Background and Evidence

The undisputed evidence shows that this tenancy began on May 1, 2011, and that current monthly rent is \$320.00. The rental unit is in a multi-story, multi-unit building.

The tenant's monetary claim is \$2400.00, which he has detailed as \$50.00 per month for the 4 years of the tenancy, for loss of quiet enjoyment of his rental unit.

In support of his application, the tenant submitted that he has suffered immensely since the beginning of the tenancy as a result of the stench emanating from his neighbour's rental unit, which impacts his ability to open his window. The tenant submitted further that the neighbouring tenant's odour makes it impossible to open his window in the hot,

summer months and to enjoy the common area of the residential property, as the stench lingers for an excessive time after this tenant walks through or has been in the common area. The tenant described the smell as excessive body odour, describing the woman as large and unhygienic.

The tenant submitted further that many other tenants living in the building have experienced the problem, but that he is the only one willing to file a dispute resolution against the landlord.

The tenant submitted that he has addressed this issue with the landlord; however, the landlord has failed to correct the problem as the neighbouring tenant still has the body odour.

The tenant submitted further that another issue he has addressed with the landlord is excessive banging from the tenant in the rental unit living below the tenant. The tenant described the noise as crashing and violent sounding, causing extreme stress and lack of sleep and that the landlord has only investigate 2 or 3 times, without any remedy to the banging.

The tenant submitted that he delayed 4 years in making his application for dispute resolution as he believed the landlord, in good faith, would take care of the problems.

The tenant's relevant documentary evidence included, but was not limited to, written witness statements, three from friends of the tenant describing the odour and banging during visits to with tenant, email communication between the tenant and the landlord's representatives regarding complaints about the neighbouring tenant's odour and the banging sound from the rental unit below the tenant, and a statement drafted by an unknown party, dated April 21, 2014, signed by three other tenants, describing what was called a "DISGUSTING ODOUR".

Landlord's response-

The landlord's agent "SL", (hereafter "landlord"), submitted that the residential property is a 3 floor, wood frame building, and that this tenant is not in good standing with the landlord, due to the numerous written warnings sent to the tenant.

The landlord submitted that all ages live in the residential property and that when the tenant first moved in, he informed the landlord that he had an auditory problem. The landlord submitted that they have received and investigated numerous complaints from the tenant, but have not been able to detect any offensive odour from the

neighbouring tenant of this tenant. The landlord submitted further that they went so far as to investigate possible medical conditions with the neighbouring tenant, with none being detected.

The landlord submitted further that they have likewise investigated the numerous noise complaints by the tenant, and have not been able to hear any excessive noise from the tenant living below the tenant. The landlord submitted further that the excessive investigations into the tenant's complaints, all with no violations substantiated, are causing harassment and a loss of quiet enjoyment for the other tenants.

The landlord submitted that they have not received any complaints from other tenants about the stench or noise issues complained of by the tenant. The landlord submitted further that the other tenants are becoming traumatized by the continuing investigations necessitated by the tenant's numerous complaints and that the three tenants who signed the tenant's statement want their name removed from this matter as they had no complaints about the alleged offensive odour or noise. Into evidence the landlord submitted a copy of an email.

The landlord submitted further that the tenant's tenancy is not in good standing and that he has been issued multiple warnings about his behaviour involving ongoing conflicts with other tenants.

The landlord's representative listed on the style of cause page, "DA", submitted that she was the property manager at this residential property from 2011-2014, and personally investigated the tenant's complaints many times, having never been able to substantiate the either of the issues. DA submitted further that as way to assist the tenant, the maintenance crew sealed the tenant's rental unit with expanding foam.

The regional manager for the landlord, "MK", submitted that due to the numerous complaints by the tenant, all complaints were eventually referred to him for investigation. MK submitted he has attended the residential property many times and could not smell the odour complained of by the tenant. MK submitted further that he has attended the rental unit of the tenant directly after a phone call and could not smell the odour or hear the banging sound.

The landlord's relevant documentary evidence included, but was not limited to, the written tenancy agreement, a behavioural agreement with the tenant, a report of one investigation by the property manager, in April 2013, with the tenant alleged to be making banging noises, with a report from that tenant that it was this tenant making the excessive noise, a response to the tenant regarding the landlord's results of an

investigation, in May 2013, other written results of the tenant's complaints, with no substantiation as the noise or odour, warning letters to the tenant about his alleged verbal abuse to the landlord's staff, and a complaint made from another tenant about this tenant's alleged behaviour issues.

Tenant's rebuttal-

The tenant submitted that the only auditory problem he has is with tinnitus.

The tenant submitted further that when the landlord has investigated his complaints, the odour may have dissipated and no noise was occurring at the time.

The tenant submitted further that the other tenants are obviously afraid to speak out against the landlord.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from the that party not complying with the Act, the regulations or a tenancy agreement, and order that that party to pay compensation to the other party.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

A breach of quiet enjoyment includes when a tenant's right to enjoy their premise in peace and without unreasonable disturbance.

Residential Tenancy Branch Policy Guideline 6 also suggests that a loss of quiet enjoyment could result in inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

In the case before me, after considering the relevant evidence of both parties, I find that the tenant failed to prove that the landlord has violated the Act or the tenancy agreement. I find the landlord's evidence shows that they made numerous investigations of the tenant's complaints about an alleged odour from another tenant or the alleged banging noise from another tenant and were not able to substantiate either the odour or noise.

I likewise find that the tenant has failed to prove that there was an excessive odour coming from another tenant or excessive noise, as a written complaint does not prove the existence of the alleged problem.

I therefore find that the landlord has complied with their requirement of ensuring the tenant's quiet enjoyment by their numerous investigations of the tenant's complaints, without being to being able to substantiate any problem.

Due to the above, I find the tenant submitted insufficient evidence that he has suffered a loss of quiet enjoyment, and I therefore dismiss his application requesting an order requiring the landlord to comply with the Act, regulations, or tenancy agreement and his monetary claim for a loss of quiet enjoyment.

Conclusion

The tenant's application is dismissed, without leave to reapply, due to the insufficient evidence by the tenant.

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 8, 2015

Residential Tenancy Branch

