



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, 0

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought a Monetary Order pursuant to section 67 of the *Residential Tenancy Act* (the "Act") for money owed or compensation for damage or loss under the act, regulation or tenancy agreement, and to recover the filing fee.

Only the Tenant appeared at the hearing. He was assisted by his daughter, Z.C., who resided in the rental unit and appeared as his interpreter. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified he served the Landlord with the Notice of Hearing and his Application on May 16, 2015 by registered mail. The Tenant provided the tracking number in evidence. Under the Act documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of May 21, 2015.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the fee paid to file their application?

Background and Evidence

The Tenant testified that he and his teenage daughter, Z.C., rented two bedrooms in the basement of a rental home. This tenancy was for a fixed one year term and began in April of 2014. Monthly rent was payable in the amount of \$1,000.00 per month. The Tenant testified he paid a security deposit of \$500.00; notably, the tenancy agreement filed in evidence indicates the security deposit was \$535.00. In any case, the Tenant testified the security deposit was returned by the Landlord after the expiration of the year term when the tenancy ended in April of 2015.

The Tenant sought compensation in the amount of \$10,000.00 as he claimed he, his wife, and his daughter were damaged by the upstairs' occupants partying for two nights in December 2014, as well as the Landlord's condoning of this behaviour. The Tenant stated that they could not sleep for two nights.

The Tenant testified that they made it clear to the Landlord that they sought a quiet rental as his daughter was in her last year of high school and needed to study.

The Tenant further testified that when he brought his concerns to the Landlord's attention she told him that it was the Christmas holidays and the upstairs occupants could party.

Introduced in evidence was a USB memory stick which was titled "Party OK". The audio clip which was contained on that USB memory stick was not in English. The Tenant did not provide a translation such that I was not able to understand what was being said; however, the Tenant testified that it was an audio clip of the Landlord stating the upstairs occupants were allowed to party from time to time.

Also introduced in evidence was a statement written by the Tenant on May 13, 2015. In this statement, he conveys the information noted above as well as alleging the following:

- The Landlord's support of the upstairs renters partying made matters worse.
- The Landlord told the upstairs renters to not worry about the Tenants and live as they always have.
- This was the Tenant's first Christmas in the city in which the rental unit was located and it was the worst holiday season they have ever experienced.

- The Tenant wrote that the Landlord refused their request to sublease and therefore could not leave before the expiration of the one year term.
- The Tenant and his family could not sleep for an entire month.
- The Tenant's wife did not "have enough force to go to work for several weeks".
- The Tenant's "child did not reach maturity, and she was disturbed in her studies and daily life".
- The Tenant had trouble concentrating at his job.
- The Tenant requested return of their rent for the month of December 2014.

Also introduced in evidence by the Tenant was a photo of a text message exchange apparently between the Tenant and the Landlord. These text messages were not written in English, although the Tenant provided a translation which indicates the Landlord apologized for the noise made by the students upstairs as well as acknowledging she was not in the country at the time this occurred.

When I asked the Tenant's daughter to explain the basis of the claim for \$10,000.00 she stated it was for "mental damage". When I asked the Tenant's daughter if they had any supporting evidence, such as a note from his doctor, she responded "the doctor wouldn't help us anyways".

When I asked the Tenant if they had any supporting evidence which would confirm they missed work, or school, the Tenant responded that they did not.

Analysis

Based on the above, the undisputed testimony of the Tenant and the evidence filed, and on a balance of probabilities, I find as follows.

I accept the undisputed evidence of the Tenant that he and his family were disturbed on the evening of December 13 and 14, 2014 as a result of the noise made by the upstairs renters. The translation of the text message provided by the Tenant suggests the Landlord was made aware of this and apologized for the disturbance.

The Tenant requested compensation pursuant to section 67 in the amount of \$10,000.00 for damages he alleges were caused to him and his family by the disturbance cause by the upstairs renters.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Tenant has the burden of proof to prove their claim.

The Tenant claimed \$10,000.00 in compensation yet provided no basis for this amount. He claimed the upstairs renters behaviour, and the condoning of that behaviour by the Landlord, caused his family “mental damage”, yet he provided no supporting evidence, such as a letter from a doctor to confirm such allegations. While he claimed his work was negatively impacted, his wife missed work and his daughter was not able to concentrate on her school work, he provided no evidence, such as employment or academic records, to show days missed at work, or a reduced grades, to support his claim for \$10,000.00.

In all the circumstances, I find that the Tenant has failed to provide proof that the damage or loss exists, and has failed to provide proof of the actual amount required to compensate for the claimed loss or to repair the damage. Accordingly, I dismiss the Tenant’s claim in its entirety.

Conclusion

The Tenant failed to prove his claim for \$10,000.00 in compensation, failed to prove damage or loss existed, and failed to prove the actual amount required to compensate

him for the claimed loss or to repair the damage. Accordingly, the Tenant's claim for compensation is dismissed.

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: October 01, 2015

Residential Tenancy Branch

