



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes

MNDC, OLC, RR, PSF, FF

Introduction

This hearing is further to an Interim Decision rendered February 24, 2016. The hearing was convened in response to the tenant's application in respect of Orders for the landlord to comply with the Act, compensation for loss, reduction of rent and provision of services in respect of the tenant's claim of a loss of quiet enjoyment. The tenant further seeks recovery of their filing fee.

Both parties appeared on both hearing dates. The parties were permitted to provide testimonial evidence and present their document and digital evidence. The landlords were primarily represented by TSP. The landlord's witnesses TJB and SB were also in attendance.

At the first hearing date the parties clarified and discussed their dispute as follows:

- The parties agreed to the exchange of all evidence.
- The landlords in attendance acknowledged receiving the tenant's application and evidence. I received evidence that respondent TSP received the tenant's application and Notice of Hearing package.
- The parties agreed the tenancy is subject to a written tenancy agreement.
- The tenancy is situated in a semi-rural/agricultural district. The rental unit is the upper portion of a 'coach house' – double car garage building in which the lower portion was originally purposed as a vehicle parking garage, but for the past 3 years has been separately tenanted as a non-residential workshop by witnesses TB/SB: more specifically as a domestic appliance repair and maintenance business / refrigeration and appliances service.

After the initial hearing date the parties provided a copy of the tenancy agreement of this matter.

Preliminary matters

Respondent TSP submitted that they are not a landlord in this matter- that they are “a friend helping a friend”. TSP provided they assist the landlord and owner by advertising the rental unit, showing the unit to prospective renters, conducting mutual inspections with renters, obtaining documentation relevant to renting the unit and collecting any security deposit and the first month’s rent – all for which the landlord/owner pays them \$300.00 per occurrence. In addition, due to a language shortfall, TSP receives requests and attends to matters respecting the rental unit on behalf of the landlord/owner.

The Residential Tenancy Act (the Act) defines a landlord as follows:

Definitions

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

I find that TSP sufficiently performs the duties assigned a landlord by the Act and as a result, I find that TSP falls under the definition of landlord pursuant to the Act in this matter.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Is the tenant entitled to a reduction of rent?

The applicant / tenant bears the burden to prove their claims.

Background and Evidence

This tenancy started February 01, 2015. Rent is \$600.00 per month payable on the first of each month. The tenancy continues. The parties did not conduct a mutual condition inspection of the unit as required by the Act at the start of the tenancy. The tenant claims the rental unit was not clean at the outset. The parties disagreed as to the general cleanliness of the rental unit. The landlord claims the unit was "spic and span", and professionally cleaned, while the tenant claims the unit cupboards and refrigerator were unclean. The tenant acknowledges they did not alert the landlord to any deficit respecting the unit when they first moved in, and the tenant did not provide supporting evidence in respect to this claim.

The tenant claims the adjacent tenant of the downstairs double garage unit (garage tenant) operates a home-based business from the garage which causes excessive noise related to their operation of the business and that the operation intrudes on their quiet enjoyment as a result. The tenant claims the garage tenant opens and closes the garage doors directly beneath the tenant's unit, loads and unloads appliances and repeatedly works on appliances with power tools, and that loud conversations are sometimes overheard below them. The tenant testified that all downstairs sounds reverberate to the rental unit above. The tenant testified the garage tenant can be heard working downstairs and that their repeated entrances and exits from the garage area - sometimes several times per day - are sufficiently audible to disturb the tenant's enjoyment of their unit. The tenant claims the garage tenant, until recently, was working in the garage below up to 20 hours per week, but has since curtailed using the garage. The tenant claims they were not told of the existence of the downstairs business by the landlord when they rented the unit. And, when the tenant became familiar with its existence it was too late for them not to accept the unit. The resulting aggravation between the two tenants has exacerbated the relationship of all parties in this matter.

The landlord acknowledged that before entering into a tenancy agreement for the upstairs rental unit they did not inform the tenant an appliance business operation existed in the garage portion of the rental building below them. The landlord testified that in their experience they did not determine it a potential issue. The landlord testified they do not monitor the comings and goings of the downstairs business, and they themselves do not reside on the residential property.

The garage tenant TJB and SB testified under affirmation as witnesses for the landlord. They claim they also rent additional space elsewhere where they now conduct work which may be deemed noisy. They estimate they utilize the double garage of this matter approximately 5 hours per week and the work is typically restricted to loading and unloading appliances from their truck. They roll the garage doors open and closed as required. The hearing was provided a copy of a current business licence by the local

government permitting the witness to utilize the garage area for: **Home-based business, home office use only – Mobile appliance Repair Contractor** – as stated. The business licence entitles the licensee to carry on the business: **Personal & Household goods repairs & maintenance repair & maintenance** – as stated.

Analysis

On preponderance of the relevant evidence and on the balance of probabilities, I have arrived at the following findings.

I have considered the contrasting evidence of the parties. I accept the landlord's acknowledgement that before they completed the tenancy agreement they failed to inform the tenant an active business already existed below the rental unit in the garage portion of the residential building. However, I also accept the tenant was initially aware a garage below them existed and of the possibility a modicum of noise from the occasional opening and closing of doors for vehicle parking would be incurred. I accept the tenant's evidence the business below them may sometimes produce noise disturbing to the tenant. I must balance such occurrences against what would have been acceptable to the tenant in renting a unit below a known 2 door/2 car garage from which they could reasonably assume some noise would emanate. I am not convinced that a comparison or consideration of the number of hours the garage is utilized by the landlord's garage tenant is an accurate reflection of the tenant's loss of quiet enjoyment. None the less, despite local government approval of the arrangement herein, I find that simply the presence of an active workshop type business operation in a typical residential building is incompatible with a residential accommodation directly above it. On balance of probabilities I prefer the evidence of the tenant that the existence of the appliance repair and maintenance business below their rental unit occasionally produces noise above and beyond what would be reasonably expected and accepted for a garage for domestic / parking use.

As a result of all the above I find the tenant is entitled to compensation for loss of quiet enjoyment in the set amount of \$500.00. The tenant is further entitled to recover their filing fee in the amount of \$100.00 for a sum award of **\$600.00**.

I further find that a reduction of rent representing a devaluation of the tenancy agreement is appropriate. **I Order** that as of **May 01, 2016** the monthly payable rent is reduced from \$600.00 to **\$570.00** until such time as the landlord may alter the rent in accordance with the Act.

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act for the balance due of **\$600.00**. The tenant can choose to collect on the monetary Order by having it enforced through the Small Claims Court, **or** through reducing this amount from future rent payments.

I Order that as of May 01, 2016 the payable monthly rent is **\$570.00** per month.

This Decision and Order is final and binding on both parties.

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: April 18, 2016

Residential Tenancy Branch