



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$516.76
- b. An order that the landlord provide services or facilities required by law
- c. An order to allow the tenant to reduce rent for repairs, services, or facilities agreed upon but not provided.
- d. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord on July 7, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenant is entitled to reduce rent for repairs, services or facilities agreed upon but not provided.

Background and Evidence

The tenancy began on March 1, 2005 when the tenant and the previous owner entered into an oral tenancy agreement. The tenant testified he was living in Montreal at the time and agreed to rent the rental unit as the advertisement the internet was included with the rent. The internet was included with the rent until March 2016. The tenant

wasn't sure but thought he paid a security deposit of \$200. The present rent is \$402 per month payable in advance on the first day of each month.

The tenant's claim is based on the following evidence:

- He was living in Montreal in 2005 when he agreed to rent the rental unit as the advertisement stated that internet was included with the rent.
- He has received internet as part of the rent from March 2005 until March 2016 when the landlord stated it was no longer provided.
- He has obtained internet from Shaw at a cost of \$35.76 per month.
- The upstairs tenant significantly interferes with his enjoyment of the rental unit by causing excessive noise from 11:00 p.m. to 8:00 a.m.
- The disturbances stated on May 1, 2016 and occurs nightly basis. It includes the moving of furniture, vacuuming heavy walking on the floor.
- The excessive noise has contributed to health problems. He has heart and lung problems and is not able to sleep. The tenant provided a letter from his doctor stating his health problems have been exacerbated by the noise pollution.
- He told the landlord but the landlord failed to respond and the noise continues.
- On May 1, 2016 he personally visited the upstairs tenant asking that he reduce the noise in the evening but the upstairs tenant called him a cry baby and laughed when I told him that I would call the police. The upstairs tenant subsequently apologized.
- The tenant refers to a letter to the landlord dated May 19, 2016 complaining about the noise.
- The tenant has complained on other occasions by telephone but he was not able to give the dates of his complaint.
- The landlord approached me about complaints about my computer during he day. I complied and use my headphone speakers.
- I am not concerned about the noise during day hours.

The landlord gave the following testimony:

- The upstairs tenant moved in on February 1, 2016 and not May 1, 2016 as alleged by the Tenant.
- That upon receiving the complaint from the Tenant I talked to the upstairs tenant. He is an author who works at night. The moving of the furniture complained of by the tenant is the moving of a rolling desk chair
- He understood that the upstairs tenant and tenant had worked out their problems.
- He told the upstairs tenant to call the police if the problem persists.

- CS testified the rental property was purchased in December 2013. The previous landlord did not provide them with a tenancy agreement for the tenant. Some of the other rental units had tenancy agreements which indicate the provision of cable was a courtesy service only.
- The cablevision company was going to significantly increase the cost and as a result the landlord decided to discontinue the courtesy. The landlord takes the position that the provision of cable vision was not a service that was included with the rent.

Law

Policy Guideline #6 provides as follows:

“...A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it. A landlord would not be held responsible for interference by an outside agency that is beyond his or her control, except that a tenant might be entitled to treat a tenancy as ended where a landlord was aware of circumstances that would make the premises uninhabitable for that tenant and withheld that information in establishing the tenancy.”

Analysis

With respect to each of the tenant's claims I find as follows:

- a. I determined that cablevision was a service that was included with the rent. I accept the testimony of the tenant that the advertisement stating this was an important reason why he rented this unit. The cablevision has been provided for approximately 10 years. I determined the tenant is entitled to \$35.76 for 3 months (June, July and August) or the sum of \$107.28. I further determined the tenant is entitled to a reduction of rent in the sum of \$35.76 per month commencing September 1, 2016 and on the first day of each month thereafter until cablevision is restored.
- b. The tenant sought compensation in the sum of \$100 per month for the May, June, July and August for the breached of the covenant of quiet enjoyment. I am satisfied there is been excessive noise from the upstairs tenant at all hours of the night and it has significantly affected the quiet enjoyment of the rental unit. The tenant's health has deteriorated as he is not able to sleep properly. The situation has not improved. The tenant gave the landlord written notice of the problem on May 19, 2016. The landlord has talked to the upstairs tenant who promised to

improve the noise situation but has failed to do so. In the circumstances I determined the tenant is entitled to compensation in the sum of \$200 for breach of the covenant of quiet enjoyment. I determined the landlord failed to take reasonable steps to correct the situation. While he has talked to the upstairs tenant he has failed to follow up to ensure the matter has been resolved. It does not appear that the landlord was able to convey to the upstairs tenant the importance of being quiet during the late evening hours. I have reduced the award from what was claimed as the tenant could have been more proactive in advising the landlord of the problem. He gave a notice in writing on May 19, 2016 but failed to follow up with any further notices in writing.

Monetary Order and Cost of Filing fee

In summary I ordered the landlord(s) to pay to the tenant the sum of \$307.28 such sum may be deducted from future rent. I further ordered that the rent be reduced by \$35.76 per month commencing September 1, 2016 and on the first day of each month thereafter until the landlord restores the cablevision.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: August 22, 2016

Residential Tenancy Branch