



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. No issues with service were raised by the parties.

Prior Application

The parties attended a prior dispute resolution hearing on 14 March 2016. In that settlement, the parties agreed to an end to tenancy, that the landlord would pay compensation to the tenant in the amount of \$500.00 and that the landlord would "make no noise other than normal living noise to the end of the tenancy".

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement? Is the tenant entitled to order requiring the landlord to comply with the Act, regulation or tenancy agreement? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began in all 2015 and ended 30 June 2016. Monthly rent was \$925.00. The tenant and his family occupied the lower level of the residential property. The landlord and his family occupied the upper level of the residential property.

The tenant seeks compensation for loss of quiet enjoyment that he experienced as a result of noise created by the landlord and his family. The tenant testified that occupants of the upper floor would get up early and start "thumping". The tenant testified that this happened daily and disturbed him. The tenant submits that \$1,000.00 in compensation is "nothing compared to the peaceful life of [a] tenant". The tenant submits that the noise caused him financial loss. The tenant testified that on 28 June 2016 at 0530 the noise was so loud his wife telephoned the police.

The landlord denies that there was excessive noise. The landlord testified that the settlement compensation was to have the tenant vacate. The landlord testified that on the day the tenant says that there were issues with noise and the tenant caused the police to attend, the landlord's family was asleep including the four-month old and three year old. The police attended on 28 June 2016 at approximately 0800. The landlord testified that the police did not identify any noise when they checked inside the home.

The landlord provided a police report dated 6 July 2016. The report notes that there were no noise issues at the time the police attended on 28 June 2016.

Analysis

The tenant seeks an order that the landlord comply with the Act, regulation or tenancy agreement. The remedy sought was to enjoin the landlord from making the impugned noise. As the tenant has vacated the rental unit, this remedy is now moot. As such, I decline to consider the request.

The tenant submits that the landlord and his family caused noise that created a breach of his right to quiet enjoyment.

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit. Quiet enjoyment includes:

- reasonable privacy;
- freedom from unreasonable disturbance;

- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Unreasonable noise may constitute a breach of the right to quiet enjoyment.

The tenant has provided testimony that the landlord caused noise in the early mornings. The tenant has not provided any recordings or corroborating testimony. The landlord denies causing or permitting unreasonable noise. The landlord testified that at the time of the tenant's complaint to the police, the landlord's family was asleep. Further, when the police attended at the rental unit in response to the tenant's complaint, they were unable to identify any unreasonable noise.

On the basis of the evidence provided by the tenant and landlord, I find that the tenant has provided insufficient evidence that there was unreasonable noise constituting a breach of the tenant's quiet enjoyment. On this basis, the tenant's claim is dismissed.

As the tenant was unsuccessful, he is not entitled to recover his filing fee from the landlord.

Conclusion

The tenant's application is dismissed

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: August 09, 2016

Residential Tenancy Branch