



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, 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*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67; and
- an order for the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not participate in the conference call hearing or provide documentary evidence. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that on August 19, 2016 she forwarded the landlord's application for dispute resolution hearing package via registered mail to the landlord. The tenant provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the application on August 24, 2016, the fifth day after its registered mailing.

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 an order for the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the testimony of the tenant, the tenancy began on October 1, 2015 on a fixed term. Rent in the amount of \$900.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$450.00 at the start of the tenancy. The tenant still resides in the rental unit.

The tenant is seeking \$4,708.00 in compensation for loss of quiet enjoyment. The tenant explained that she resides on the second level of a three level wood frame building. The tenant testified that since April of 2016 she has endured late night noise from the upstairs tenant. The tenant has provided a list of dates and a description of noise heard since April 2016. As part of her documentary evidence the tenant has provided two letters she has written to the upstairs tenant, and two emails along with two letters she has written to the landlord regarding the noise.

The tenant seeks to recover rent paid in the amount of \$900.00 from April to August 2016, for a total of \$4,500.00. The tenant estimates at minimum she has lost 10 nights of sleep per month from April to August 2016.

As a result of the noise, the tenant claimed lack of sleep which led to missed work. The tenant seeks to recover \$18.40 per hour for 7.5 hours worked on June 14, 2016 for a total of \$138.00. The tenant provided a letter written by her employer. Additionally the tenant testified that in her second job as an instructor of a driving school she had to cancel two driving lessons at the rate of \$35.00 each for a total of \$70.00. The tenant provided a letter written by her driving lesson student.

Analysis

As per section 28 of the *Act* a tenant's entitlement to quiet enjoyment include 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 and use of common areas for reasonable and lawful purposes, free from significant interference.

As per the Residential Tenancy Policy Guideline, "6. *Right to Quiet Enjoyment*" (the "Policy") a tenant's right to quiet enjoyment may be breached by frequent and ongoing interference or unreasonable disturbances. Further, a temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. The Policy indicates a landlord may be held responsible for the actions of

other tenants if it can be established that the landlord was aware of a problem and failed to take action to rectify it.

The tenant has provided undisputed evidence that illustrates unreasonable disturbance. The tenant testified to and provided dates describing the noise from the upstairs tenant. The noise is described as stomping, slamming furniture and loud banging typically between the hours of 11:30 p.m. and 6:00 a.m. The evidence suggests this noise was not temporary but rather ongoing from April until August 2016. I further find that the tenant adequately established that the landlord was aware of the noise issue and the landlord failed to take reasonable steps to address the issue. For these reasons I find that the tenant has demonstrated the tenant's right to quiet enjoyment has been breached by continuous unreasonable disturbances in the form of noise from the upstairs tenant, and is entitled to compensation.

The tenant seeks monetary compensation in the amount of \$4,500.00 for rent from April to August 2016 and lost wages in the amount of \$208.00 for a total of \$4,708.00.

Section 65(1)(f) of the *Act* allows me to issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement. In this case, I find that as a result of breach of the tenant's right to quiet enjoyment pursuant to section 28, the value of the tenancy agreement was reduced.

Residential Tenancy Policy Guideline, "*6. Right to Quiet Enjoyment*" provides me with guidance in determining the amount of the reduction in value. The Policy establishes that I should take into consideration the seriousness of the situation and the length of time over which the situation has persisted. In this case, the noise persisted from April 2016 to August 2016. As a result of the noise, the tenant lost sleep, missed work and the opportunity to earn wages. I do not accept the tenant's submission that the value of the rental unit was reduced by 100% as at times she was still able to use the rental unit free of noise.

In this situation, the assessment of damages is not a precise science; it is not even a calculation. With consideration of the wood structure of the building and the duration of the loss, I value the diminishment of the tenancy as 15%. I find that the tenancy was devalued over the period from April 1, 2016 to August 31, 2016, I find that the tenant is entitled to a past rent abatement in the amount of \$135.00 for each of the five affected months based on rent being \$900.00 per month for the above months. I consider this amount reasonable given the impact that the noise had on the tenant.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

I order the tenant to deduct \$775.00 from future rent payable to the landlord at the rental unit, in full satisfaction of the monetary award provided to the tenant at this hearing.

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: September 26, 2016

Residential Tenancy Branch