



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- other unspecified remedies.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 52 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

The landlord confirmed that she received the tenant's USB drive with audio files but that she did not look at it because she thought it was irrelevant. I advised both parties that I would consider the tenant's USB drive at this hearing and in my decision because the landlord properly received the evidence and chose not to review it.

At the outset of the hearing, the tenant confirmed that he did not require any other unspecified remedies, and it was applied for in error. Accordingly, this portion of the tenant's application is withdrawn.

Preliminary Issue – Proper Landlord Named in Application

Both parties presented submissions regarding who was the proper landlord for this rental unit. The landlord raised the issue both before and during the hearing.

The landlord confirmed that she was the proper landlord for this rental unit. She maintained that her husband entered into the tenancy agreement with the tenant. She said that she was the administrator for the rental unit after her husband passed away and she dealt directly with the tenant and accepted rent from him for this tenancy. She stated that she began dealing with the tenant on April 1, 2015 until she sold the unit to a “new owner” on April 1, 2016. She said that she was the landlord for this unit during the time period for when the tenant is claiming for a loss of quiet enjoyment from July to December 2015, in this application.

Both parties agreed that the landlord named in this application was the proper landlord for this tenancy.

Issue to be Decided

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on May 1, 2014. Monthly rent in the amount of \$950.00 was payable on the first day of each month. Both parties signed a written tenancy agreement for a fixed term of one year after which it became a month-to-month tenancy. The tenant signed a new tenancy agreement on April 27, 2016 with the new owner of the unit. A security deposit of \$475.00 was paid by the tenant to this landlord and it was transferred to the new owner. The tenant continues to reside in the rental unit and is currently under a tenancy with the new owner.

The tenant seeks a monetary order of \$300.00 from the landlord. He said that there were ongoing repairs and construction at the rental building from approximately July 6, 2015 until the end of December 2015. He claimed that he was told the construction was

to end in October 2016 but it did not. He said that there was drilling of concrete and pouring of concrete to fix the old outer envelope of the building. He said that the noise travelled throughout the building and no matter what side was being repaired, he could hear the noise. He said the noise was ongoing throughout the day, usually from about 8:30 a.m. until 5:00 p.m. daily on weekdays. He stated that sometimes the work would continue past 5:00 p.m. on weekdays and would also occasionally occur on weekends.

The tenant said that the construction noise was so loud that it was deafening, rendering it difficult to watch television, hear the radio or carry on conversations with other people. He stated that the noise was not continuous or predictable. The tenant provided audio recordings of some of the sounds from May and June 2016, stating that he had not thought to take samples of the noise from 2015. He said that he was not aware he could claim for a loss of quiet enjoyment until after December 2015.

The tenant testified that the construction was on hiatus from January to March or April 2016 when it restarted again and finished in August 2016. He maintained that the noise caused his furniture to shake. The tenant confirmed that the noises and disturbances were so loud and difficult to endure that he had to leave his home and spend his days at the library and coffee shops, since he was retired. The tenant stated that he spent money going out because he could not be at home during the day. The tenant explained that initially, he left his windows open, which caused harmful chemicals from the construction spraying to enter his rental unit, irritating his sinuses. He later researched and determined that the chemicals contained carcinogens. He said that he was forced to close his windows during the hot summer months, which made it unbearable to remain in the unit during this time.

The landlord lives in the same rental building in a different unit. She agreed that the construction noise was temporary but very annoying. She said that the tenant was aware that the construction was going to happen when he moved into the rental unit because there were notices posted in the elevators. The tenant disputed this, stating that he was not told about the planned construction before he moved in otherwise he would not have done so. He maintained that he uses the stairs, not the elevator, so he did not see the notices. The landlord said that she had no control over the noise, that strata approved this major construction project which was necessary for the safety of the very old building and she provided documents to confirm same. She claimed that if the noise was so bothersome to the tenant, then he should have moved out. The tenant testified that he tried to find a new place in order to move but the vacancy rate has been so low.

Analysis

As per section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 32 of *Act* states the following with respect to the obligations of both parties during a tenancy:

- (1) A landlord must provide and maintain residential property in a state of decoration and repair that*
- (a) complies with the health, safety and housing standards required by law, and*
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment:

- 28** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
- (a) reasonable privacy;*
 - (b) freedom from unreasonable disturbance;*
 - (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
 - (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Residential Tenancy Policy Guideline 6 “Entitlement to Quiet Enjoyment” states the following:

A landlord is obligated to ensure that the tenant’s entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises.

...

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations...

Both parties agreed that there were loud, ongoing, disturbing noises that were clearly audible in the rental unit. The landlord lives in the same building and stated in her written evidence and oral testimony, that the noises were loud and difficult to live with. I accept the tenant’s testimony that he was unable to stay in his rental unit for extended periods of time, due to the ongoing noise, regardless of where the construction was

being performed on the building. The tenant is retired and does not work during the day so would ordinarily enjoy being in his rental unit during this time. The tenant maintained that he had to leave the unit during the day for long periods of time in order to avoid the noise. The tenant had to close his windows during the hot summer months, due to the toxic chemicals being sprayed outside, as these chemicals interfered with his sinus condition.

I find that the tenant suffered a loss of the value of his rental unit, due to the ongoing noise from July to December 2015. I find that the tenant should be able to live in an environment free of constant loud noise, in order to function in activities of daily living and to enjoy his unit. I find that the tenant's right to quiet enjoyment under section 28 of the *Act* was breached by the noise, which constituted an unreasonable and ongoing disturbance. I accept the tenant's testimony that he was not aware of the planned construction prior to moving in. I find that the tenant made efforts to move and look for another place to rent, but he is not obligated to vacate the rental unit in order to prove his claim for a loss of quiet enjoyment.

I find that the landlord breached section 32 of the *Act* by failing to provide a rental unit that was suitable for occupation by the tenant. Although the landlord said that the noise issue was under the control of the strata management company, who authorized the construction, which occurred in the outer, common areas of the rental building, the landlord is still responsible to provide an adequate rental unit to the tenant as part of the tenancy agreement. The tenant has a legal contractual relationship with the landlord.

I find that the tenant is entitled to a return of \$50.00 per month of his rent paid to the landlord between July and December 2015, totalling \$300.00 (\$50.00 x 6 months = \$300.00). The tenant said that he paid rent of \$950.00 per month to the landlord during the above time period. I find that \$50.00 is a modest and reasonable amount for compensation for a loss of quiet enjoyment. I find that the tenant still had use of the rental unit during the above time period and that he owes the remaining rent of \$900.00 per month for this use.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$300.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application for other unspecified remedies is withdrawn.

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: November 09, 2016

Residential Tenancy Branch