



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC

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 requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62.

The tenant and the landlord's agent, KF ("landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenant's application including documentary evidence. The landlord also confirmed she did not provide any documentary evidence of her own for this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application and documentary evidence.

Preliminary Issue – Previous Decision

A previous decision was rendered on June 20, 2016 regarding this tenancy. The file number has been included on the front page of this decision for ease of reference. In the June 20, 2016 decision, the arbitrator found the tenant had not established grounds for compensation due to harassment from the neighbor and dismissed this portion of the tenant's claim without leave to reapply.

Despite this dismissal, the tenant filed this application claiming compensation due to harassment from the neighbour using much of the same evidence already decided upon. Therefore I have not relied upon any evidence dated prior to June 20, 2016 to form any part of my decision.

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 requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

As per the testimony of the parties, the tenancy began on February 23, 2009 on a month-to-month basis. Rent in the amount of \$356.00 is payable on the first of each month. The tenant remitted a security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

Tenant

It is the tenant's position that his neighbour should be evicted and because he cannot evict his neighbour himself he has filed an application for a monetary order in an effort to pressure the landlord to evict his neighbour. The tenant seeks \$700.00 in compensation for the loss of quiet enjoyment in the form of harassment and noise by the tenant's neighbour. The tenant has submitted copies of emails containing complaints regarding his neighbour he testified were sent to the landlord. The tenant has also submitted a flash drive containing two photographs and a short video.

The tenant testified that the neighbour stores bicycles outside the neighbour's rental unit contrary to the policy of no bike storage in common areas. The tenant would like the landlord to be ordered to enforce the bike storage policy against the neighbour.

Landlord

In reply, the landlord testified that she has received emails from the tenant complaining about his neighbour, but has received no other complaints regarding this neighbour from any of the remainder 86 rental units in the building. The landlord acknowledged that she has not acted upon all of the tenant's complaints regarding the neighbour because the tenant has failed to substantiate his complaints with any form of evidence. The landlord testified that without corroborating evidence from the tenant she has refrained from addressing the neighbour with all the tenant's complaints as this would constitute harassment on her part. In summary the landlord testified that she cannot "go after" the neighbour based on the tenant's sheer dislike of him.

The landlord testified that notices are regularly posted regarding bike storage and other items in the common areas; however it is not possible to ensure complete compliance all the time. The landlord testified that there are instances in which visiting guests may temporarily park bikes outside the units.

Analysis

The tenant seeks \$700.00 in compensation for the loss of quiet enjoyment in the form of harassment and noise by the tenant's neighbour.

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.

In this case the onus is on the tenant to prove the extent of interference the neighbor's activity has had on his quiet enjoyment. Upon review of the submitted evidence, I find the instances as described by the tenant do not constitute harassment which would entitle the tenant to compensation for the loss of quiet enjoyment. In relation to noise I find it likely that this complex, like many, is not very sound-proof and that raised conversations, music or television probably can be heard in adjacent rental units. I find it probable that the tenant heard noise as described in his emails however I find this does not constitute significant interference or unreasonable disturbance which forms a breach of quiet enjoyment.

With regard to the bike storage issue, I find the tenant has provided insufficient evidence to establish the neighbor is storing bikes in the common area or eliminate the possibility that the neighbor or his guests are temporarily parking them. Further the tenant has failed to establish how the storage of such bikes interferes with his use of the rental property. For these reasons, I dismiss the tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

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: February 16, 2017

Residential Tenancy Branch