



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNDC, MNSD, MT, O

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for a monetary Order for money owed or compensation for damage or loss; for more time to apply to cancel a Notice to End Tenancy; for the return of the security deposit, and for "other".

The Tenant stated that on March 05, 2017 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord. The Landlord acknowledged receipt of these documents.

On March 21, 2017 the Landlord submitted 3 pages of evidence to the Residential Tenancy Branch. The Landlord stated that these documents not served to the Tenant. As the evidence was not served to the Tenant acknowledged it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

With the consent of both parties the Application for Dispute Resolution was amended to reflect the spelling of the Landlord's name. The name of this decision reflects the spelling of the Landlord's name, as provided at the hearing.

Preliminary Matter #2

At the hearing the parties agreed that the Landlord did not serve the Tenant with a Notice to End Tenancy. I therefore will not be considering the application for more time to apply to cancel a Notice to End Tenancy or the application to cancel a Notice to End Tenancy for Cause.

Preliminary Matter #3

At the hearing the Tenant stated that his application for a monetary Order of \$850.00 included his claim for the return of his security deposit of \$450.00.

As this tenancy has not yet ended, I find that the Tenant's application to recover the security deposit is premature. I therefore will not be considering the application for the return of the security deposit.

Preliminary Matter #4

At the hearing the Tenant stated that his application for a monetary Order of \$850.00 included a claim of \$100.00 for filing this Application for Dispute Resolution.

As the Tenant has not applied to recover the fee for filing this Application for Dispute Resolution, I will not be considering whether he is entitled to recover that fee. I note that even if I had considered this application I would have dismissed the claim as the Tenant has not established the merits of his Application for Dispute Resolution.

Preliminary Matter #5

At the hearing the Tenant stated that his application for a monetary Order of \$850.00 included a claim of \$300.00 in compensation for noise disturbances in the rental unit.

The Owner stated that they are prepared to respond to this portion of the Tenant's claims and I will, therefore, consider that claim at these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to compensation because the rental unit was noisy?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on February 05, 2017;
- the tenancy was a fixed term tenancy, the fixed term of which was to end on January 31, 2018;
- the rent of \$900.00 is due on the first day of each month;
- the rental unit is near the automatic garage door; and
- they signed a mutual agreement to end the tenancy, effective March 31, 2017.

The owner stated that they agreed to end the tenancy prior to the end of the fixed term because they were aware the Tenant was not happy with the unit and he was complaining about noise in the unit.

The Tenant stated that he wanted to end the tenancy prior to the end of the fixed term because he was disturbed by the noise levels in the rental unit. The Tenant is seeking compensation for the noise disturbances he experienced during his tenancy, in the amount of \$300.00.

In support of his claim for \$300.00 the Tenant stated that:

- when he viewed the rental unit he was very happy with the condition of the unit;
- when he viewed the rental unit he was not aware that the garage door would be so loud;
- he is frequently bothered by the sound of the garage door opening and closing;
- the occupant of the upper unit has a small child who runs on a very frequent basis;

- the sound of the running disturbs him;
- he told the Landlord about his concerns with the child on February 17, 2017;
- at the request of the Landlord he sent his concerns to her, in writing, on February 19, 2017;
- the Landlord told him that she would speak to the occupants living above him but he does not know if she did;
- after February 19, 2017 the noise levels were reduced but he was still bothered by the sound of running;
- he reported the noise from the child again on March 09, 2017, by text message;
- he did not receive a response to this text message;
- the Landlord offered him another suite in the residential complex, but it was too expensive; and
- the Landlord offered him a second suite in the residential complex, but it was not renovated and not as nice as the unit he rented.

In response to the claim for \$300.00 the Landlord stated that:

- on February 20, 2017 the Tenant told her he was bothered by the sounds of a child running in the unit above him;
- on March 03, 2017 he documented his concerns about the child, in writing, at her request;
- she informed the occupants of units 203 and 204 of the noise complaint and asked them to reduce the noise levels;
- on March 05, 2017 she told the Tenant she had advised the occupants of units 203 and 204 of the noise complaints;
- the Tenant reported the noise from the child again on March 09, 2017, by text message;
- she spoke with the occupants living above the Tenant and they advised they are trying to control the noise levels;
- she did not inform the Tenant that she had spoken with the upper occupants a second time;
- she went to the rental unit to assess the noise levels and she did not hear any noise from the child;
- when she was at the rental unit she did not think the noise from the garage door was unreasonable; and
- in an attempt to resolve the Tenant's noise concerns she offered him two other units in the complex.

The owner stated that part of the reason she agreed to end the tenancy prior to the fixed term of the tenancy is that she did not believe that she had the right to end the tenancy of the occupant living above the Tenant solely on the basis that there was a child living in the rental unit.

The Witness for the Tenant stated that she has been in the rental unit on 2 or three occasions and has clearly heard a young child frequently running in the upper suite.

Analysis

Section 28 of the *Residential Tenancy Act (Act)* stipulates that a tenant is entitled to quiet enjoyment of the rental unit including, but not limited 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 in accordance with section 29 of the *Act*; and use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline #6, with which I concur, suggests that a landlord is obligated to ensure that a 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.

I find that any tenant who rents a rental unit near an automatic garage door should anticipate there will be noise associated to the door opening and closing on a regular basis and noise associated to vehicles coming and going. I find that these noises are largely beyond the control of the Landlord.

While I accept that the Tenant was bothered by the noise of the garage door, I cannot find that this noise was unreasonable given the location of the rental unit. As the noise was not unreasonable and should have been anticipated, I cannot find that the Landlord has breached the Tenant's right to the quiet enjoyment of the rental unit in regards to the garage door. I therefore will not award any compensation to the Tenant as a result of these disturbances.

I also accept that the Tenant was bothered by the noise of a young child running in the suite above him. I find, however, that the Landlord acted reasonably in response to the Tenant's complaints regarding this noise.

In determining that the Landlord acted reasonably in response to the Tenant's complaints regarding the young child, I was influenced by the undisputed testimony of the Landlord, who stated that after receiving a complaint from the Tenant she informed the occupants of units 203 and 204 of the noise complaint and asked them to reduce the noise levels.

In determining that the Landlord acted reasonably in response to the Tenant's complaints regarding the young child, I was influenced by the undisputed testimony of the Landlord after receiving a second complaint from the Tenant and was advised they were trying to control the noise.

In determining that the Landlord acted reasonably in response to the Tenant's concerns about noise, I was influenced by the undisputed evidence that the Landlord agreed to end this tenancy prior to the end of the fixed term of the tenancy. I find that this was a very reasonable attempt to resolve the Tenant's concerns, particularly when the Landlord's ability to control the course of the noise.

In determining that the Landlord acted reasonably in response to the Tenant's concerns about noise, I was influenced by the undisputed evidence that the Landlord offered two alternate units in the residential complex. I find that this was also a reasonable attempt to resolve the Tenant's concerns.

I adjudicating this matter I agree with the submission of the owner, who stated that it was unlikely she had the right to end the tenancy of the occupant living above the Tenant solely on the basis that there was a child living in the rental unit. Although it may be possible to end a tenancy if a child is disturbing others, that would likely only be possible if it was established that

the child was making an unreasonable amount of noise for the age of the child and the guardian was not making reasonable efforts to control the behavior of the child. In these circumstances I think it is highly unlikely that the Landlord could end the tenancy of the upper Tenant at this point in the tenancy.

As the Tenant has failed to establish that the Landlord did not act reasonably in regards to the Tenant's complaints regarding the young child, I will not award any compensation to the Tenant as a result of these disturbances.

Conclusion

I dismiss the Tenant's application for a monetary Order as he has failed to establish that the Landlord has breached his right to the quiet enjoyment of the rental unit.

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: March 30, 2017

Residential Tenancy Branch