



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation for damages or loss under the Act and to have the landlord comply with the Act.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary and procedural matter

At the outset of the hearing, I clarified the tenant's application for monetary compensation. This was done because the tenant did not check of that box in their application; however, it was written in the details of dispute. The landlord has acknowledged they fully understood the tenant's claim and was ready to proceed.

Issues to be Decided

Is the tenant entitled to a monetary order rent?
Should the landlord be ordered to comply with the Act?

Background and Evidence

The tenancy began on April 2011. Rent in the amount of \$575.50 was payable on the first of each month. The tenant paid a security deposit of \$161.00.

The tenant claims as follows:

a.	Return of rent paid for January 2017 \$555.00 and the subsequent months' rent of \$575.00	\$4,005.00
----	---	------------

The tenant testified that since January 2017 to July 20, 2017, the rental unit that was adjacent to their rental unit was under renovation and was being used as a workshop while other units in the building were being renovated. The tenant stated that the ongoing noise was from 7:00 am to 4:00 pm Monday through Friday.

The tenant stated that the noise was horrific, as they smashed the cupboards off the walls, rather than unscrew them and they smashed the walls out. The tenant stated that they were also using this unit as a workshop while making renovations to the other units and the noise for 7 months was unreasonable.

The tenant testified that they informed the landlord many times about the noise and nothing was ever done. The tenant stated they should not have to pay any rent during this time.

The landlord testified that they are the agent for the owner and four units in the building were being renovated. The agent stated it was loud, as the unit had to be taken down to the studs. The landlord stated that they are only at the building 3 days a week and then only in the afternoon. The landlord stated they have no idea if the adjacent unit was used as a workshop.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) **unreasonable freedom from disturbance;**

...

I accept the evidence of the tenant that they were unreasonable disturbed between January 2017 to July 20, 2017, due the unit adjacent to their unit being used as a workshop while the other units in the building were being renovations. I further accept the evidence of the tenant that there was considerable noise when this rental unit was taken down to the stud and then renovated.

While I have to balance the tenant's rights to quiet enjoyment and the landlord's rights to make repairs to the unit, I find 7 months is unreasonable with ongoing noise.

In this case, the tenant seeks the return of all rent paid, I find that unreasonable as the work was completed during normal working hours and not in the evening or on weekend. However, I find that the tenant's was unreasonable disturbed during the day from January 2017 to July 20, 2017. Therefore, I find the tenant is entitled to the compensation that equals one third of their rent, which I have determined is the amount of **\$1,265.75**.

I find that the tenant has established a total monetary claim of \$1,265.75. I grant the tenant a monetary order in the above amount. The tenant may deduct the above amount from future rent payable to the landlord or alternately they may file this order in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order as stated above.

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: August 08, 2017

Residential Tenancy Branch