



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application under the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

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.

As the parties were both in attendance I attempted to confirm service. The landlord confirmed receipt of the tenant's application and evidence. I find that the landlord was served with the tenant's application package in accordance with sections 88 and 89 of the *Act*. The landlord said that he served his evidence package on the tenant at the tenant's address for service provided on the tenant's application for dispute resolution. The tenant said that he had not received the landlord's evidence as he no longer resides at the address provided on the application. The tenant did not provide any alternate address for service. I accept the landlord's evidence that he mailed the evidence to the address provided by the tenant. While the tenant testified that he had not received the landlord's evidence, I find that the landlord acted in accordance with the *Act* by serving the materials to the address provided by the tenant. I find that the tenant's failure to receive the landlord's evidence is borne out of the tenant's actions by failing to provide an address for service where he could receive documents. In accordance with Rule of Procedure 3.17 I accept the landlord's documentary evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

This periodic tenancy began in August, 2012 and ended on April 30, 2017. The rental unit is a suite in a multi-unit complex managed by a strata company.

The tenant testified that throughout the tenancy he suffered from noise and disturbance from the downstairs neighbor. The tenant described the noise as a combination of music played on a stereo, television, and dogs barking throughout the day. The tenant described the noise as constant and a targeted attack on him. The tenant explained that because he made complaints through the landlord who reported the issue to the strata company the downstairs neighbors retaliated by increasing the noise level. The tenant testified that while he did not encounter or have personal interactions with the downstairs neighbor throughout the majority of the tenancy the neighbors would retaliate against him for the complaints by increasing their noise level. He believes that the downstairs neighbors would make their dogs bark on purpose, and keep them in an agitated state so that they would bark continuously. The tenant said that this continued throughout the tenancy and when the downstairs neighbor had a child, they changed tactics by banging on the walls and ceiling at all hours of the night, specifically to disturb him. The tenant said that any complaints were simply forwarded by the landlord to the strata who would issue a warning letter to the downstairs neighbor. The tenant submitted into written evidence copies of negative online reviews of the property management company in support of his position that no reasonable action was taken.

The tenant submits that \$25,000.00 is an appropriate amount of damages for the loss of quiet enjoyment and aggravated damages suffered throughout the tenancy. The tenant testified that he works from home and because of the continued noise he was unable to work and earn an income. The tenant calculates that the rental unit was unusable for the majority of the time that the neighbor continued to direct noise at him.

The tenant believes that the landlord did not take reasonable steps to ensure quiet enjoyment as he simply forwarded the complaints to the strata instead of taking further actions.

The tenancy ended in accordance with a 2 Month Notice for Landlord's Use of property on April 30, 2017. The landlord testified that he uses the rental unit himself and has not experienced the noise that the tenant complained about during his time in the rental unit. The tenant said that the lack of noise against the landlord should be further evidence that the downstairs neighbors personally targeted him.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

The tenant makes a claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

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;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

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 a 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 the tenant has not shown on a balance of probabilities that there has been any violation of the *Act*, regulations or tenancy agreement by the landlord that gives rise to a claim in damages.

I accept the landlord's evidence that they took reasonable steps in response to the tenant's noise complaints. In a strata development where individual owners own the strata lots but common areas are administered by the strata corporation I find that the landlord was reasonable in taking the tenant's complaints to the management company of the strata corporation. I find that the landlord took reasonable steps in response to

the tenant's complaints to ensure the tenant's entitlement to quiet enjoyment of the rental unit.

I find the tenant's claim that there has been a breach of his quiet enjoyment due to the noise of the downstairs neighbor to have little evidentiary basis. The tenant's claim that the neighbors purposely agitate their dogs to bark in their home to harass the tenant and that they bang on the walls at all hours of the night when they have a new baby to have no air of reality. I find that the video and audio recordings submitted by the tenant into evidence does not show a noise level above that which would be expected in any multi-unit building. The correspondences sent by the tenant to the landlord primarily consist of the tenant's theories that he is the target of a harassment campaign by the neighbors as well as unpleasant characterizations of the neighbors. I find the tenant's evidence, both individually and taken in its entirety, fails to show that any disturbance is a result of external forces. Under the circumstances, I find that the landlord took all reasonable steps in response to the tenant's complaints.

As I find there is insufficient evidence that there has been a violation of the Act, regulations or tenancy agreement by the landlord to give rise to a monetary claim I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's application is dismissed.

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 17, 2017

Residential Tenancy Branch