



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRANG HOLDING LTD
and [tenant name suppressed to protect privacy]

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 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.

Issues to be Decided

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

Background and Evidence

The tenancy began on April 1, 2015. Rent in the amount of \$1,010.00 was payable on the first of each month. The tenant paid a security deposit and pet damage deposit totaling \$950.00. The tenancy ended on December 30, 2017.

The tenant claims as follows:

a.	Aggravated damages	\$6,000.00
	Total claimed	\$6,000.00

The tenant testified that the downstairs tenant moved to the rental premises in June 2017, and since then they have been harassed by them, called names, banging on my floor, running saws and drills.

The tenant testified that they provided regular text messages to the landlord on incidents when they occur; however, those text messages were never responded too. The tenant stated that at times they left messages on the landlord's phone and those were not responded too.

The landlord's agent testified that the building is of made of wood construction and noise easily travels. The agent stated that they have responded to all telephone calls that were made by the tenant. The agent stated that both tenants are blaming each other and they were both told that they need to provide evidence, such as a video recording. The agent stated that both of the tenants are engaging in poor behaviour and both have been warned and served with notices to end the tenancy.

The landlord's agent testified that the tenant subject of today's hearing had 15 music noise complaints in one month and they were from all the surrounding tenants, not just the tenant below.

The tenant responded that when the new renter moved into the premises they did not play their music on purpose, since they did not want to get blamed for the new tenant making noise.

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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money, or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or

through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

In this case the tenant seeks aggravated damages; however, the evidence supports that both of the tenants were both engaging in poor behaviour, as an example there were 15 complaints of the tenant subject to today's hearing playing their music too loud and the other renter banging on the tenant's floor. While the tenant denied this, I find that is highly unlikely, as the tenant stated that they purposely did not play their music when the new tenant living below them moved into the premises. This makes no sense and I find it highly unlikely that a tenant would change their behavior if it were reasonable simply because someone new moved in to the premises.

I find the landlord cannot be held responsible when both tenants are engaging in childish behaviour. The landlord did take reasonable actions by serving both tenants with a notice to end tenancy. I find the tenant has failed to prove a violation of the Act by the landlord.

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

Conclusion

The tenant's 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: January 19, 2018

Residential Tenancy Branch