



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC MNDC

Introduction

This hearing was convened in response to applications by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*, and
- an Order directing the landlord to comply with section 62 of the *Act*.

Only the tenant and his advocate J.G. attended the hearing. Both the tenant and his advocate were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The tenant explained that he sent a copy of his application for dispute resolution, along with his evidentiary package to the landlord by way of Canada Post Registered Mail on November 9, 2017. A copy of the Canada Post Registered Mail receipt and tracking number were provided to the hearing as part of the tenant’s evidentiary package. Pursuant to sections 88, 89 & 90 of the *Act*, the landlord is deemed served with the tenant’s application on November 14, 2017, five days after their posting.

Issue(s) to be Decided

Is the tenant entitled to a monetary award?

Should the landlord be directed to comply with the *Act*?

Background and Evidence

Undisputed testimony provided to the hearing by the tenant explained that rent for the unit is currently \$375.00 and no security deposit was collected on the unit. The tenant said he was seeking a monetary award of \$62.50 representing disturbances that have occurred in the rental building and which have not been addressed by the landlord. The tenant is looking to recover 5 days of daily rent at \$12.50/day for the disturbances which he reported to the landlord, but on which he said the landlord failed to act.

Specifically, the tenant said disturbances from neighbouring units took place on May 27, July 18, July 21, August 2 and November 5, 2017. The tenant said that he reported these disturbances on 3 separate occasions to the landlord; May 7, July 18 and August 2, 2017. He said that while the landlord acknowledged that noise had been created after quiet hours, no steps were taken to address these issues.

The tenant described disturbances in the building taking place between 11PM and 1AM, “every few weeks” but noted that the dates provided to the hearing were particularly bad. He said parties and loud conversations took place in the surrounding units, but the landlord failed to take any action to quieten these activities.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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. In this case, the onus is on the tenant to prove his entitlement to a monetary award.

I find that the tenant was able to provide accurate testimony explaining the disturbances which occurred in the rental building. The tenant was consistent with the dates that disturbances occurred, and I find that while the landlord was informed of these disturbances on three separate occasions, he took no steps to address the tenant’s concerns.

Section 28 of the *Act* states, “A tenant is entitled to quiet enjoyment including, freedom from unreasonable disturbance.” I find that the landlord has failed to provide the tenant

with the quiet enjoyment to which he is entitled under the *Act*. I therefore, award the tenant the entire amount sought in his monetary award.

The landlord is ordered under section 62 of the *Act*, to provide a quiet environment to his residents under Section 28 of the *Act*. Failure to adhere to this section may result in further compensation being granted to residents who are able to prove that they have suffered a loss of quiet enjoyment because of inaction on the part of the landlord.

Conclusion

I order the tenant to recover the entire amount of his application for a monetary award in the amount of \$62.50.

The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord is ordered to comply with section 28 of the *Act*. Failure to adhere to this section may lead to the issuance of future monetary awards being levied against him.

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 24, 2018

Residential Tenancy Branch