



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC, FF

Introduction

This hearing was convened in response to an application for dispute resolution made on March 1, 2018 by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the Landlord’s compliance - Section 62;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord’s Legal Counsel indicates that the Tenant is seeking a large amount for compensation and that the Tenant has not provided sufficient particulars on the basis of the monetary amount being claimed or how the Tenant arrived at such a sum. Legal Counsel seeks an adjournment in order for the Tenant to provide such particulars. Counsel confirms that the Landlord did receive the Tenant’s evidence package setting out the details of the claims and had sufficient time to review these details. Counsel confirms that he was retained only the day before this hearing. The Tenant states that she worked hard to put together a comprehensive claim with dates, times, and photos without having any idea how to do it. The Tenant states that this is the first time the Tenant has made an application for dispute resolution. The Tenant states that she did

not know she had to provide any more detail for the amount claimed or how she calculated it. The Tenant states that the amount is not based on any calculation as the damages are subjective and difficult to quantify in monetary terms. The Tenant states that she has taken time off work to attend this hearing and has lost employment income as a result. The Tenant states that she does not understand the legal terms being used for the request for the adjournment and feels at a disadvantage. The Tenant states that she wants the hearing to conclude today and does not agree to an adjournment.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure provide that the arbitrator will determine whether the circumstances warrant the adjournment of the hearing. Although I accept that the Landlord's Legal Counsel was retained only recently, given the date of the application I consider that the Landlord did have over two months to retain legal counsel. The Tenant should not be prejudiced from the Landlord's lack of earlier action. Indeed this dispute appears to be about the Landlord's timely action in relation to the tenancy. As this process is designed for lay persons, a party to a dispute cannot be expected to know precisely how to frame its claims to meet precise legal requirements and it is not uncommon for disputants to simply provide a global sum of money for its compensation claim. This approach, while not recommended, can be dealt with through assessing whether the accepted facts support the claimed amount. An adjournment would not likely give the Landlord any more detail than already provided. For these reasons I find that to adjourn would prejudice the Tenant and I decline to adjourn the hearing.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to an order for the Landlord's compliance?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy of an upper unit started in 2011 or 2013. Rent of \$1,575.00 is payable on the first day of each month. The tenancy includes access to laundry at will, garbage and recycling pickup with bins, two parking spots and running water. The Parties agree that the lower unit tenants who were the subject of the disturbance to the Tenant have now moved out of the unit.

The Tenant states that she has been subjected to significant disturbance by the lower tenants since January 2017 and that the Landlord has failed to respond appropriately resulting in the Tenant's loss of quiet enjoyment of her unit and the loss of use and access to the laundry facilities, garbage and recycling disposal services, parking spots, and water for showers. The Tenant provides a written submission containing dates and details of disturbances from January 2017 until March 31, 2018. The Tenant states that she does not know how many times she reported noise issues to the Landlord and that the dates provided in the submission do not include all the disturbances.

The Tenant states that the noise disturbances occurred on a near daily or nightly basis. The Tenant states that the lower tenants have been loud and noisy with frequent parties until morning. The Tenant states that all of her complaints to the Landlord have been directed to the Landlord's son who speaks perfect English. The Tenant states that she has provided copies of all the texts between herself and the son.

The Tenant states that the lower tenants had several people coming and going and that they monopolized the laundry facilities. The Tenant states that the lower tenants left the area a mess with stored garbage over maggots. The Tenant states that when she would go to the laundry she would be confronted by a strange man asking her what she was doing there. The Tenant states that she finally stopped using the laundry in the summer of 2017.

The Tenant states that the constant flow of people at the unit created an excessive amount of garbage and recycling to the extent that there was no room for the Tenants garbage and recycling. The Tenant states that the Landlord also did not provide additional bins for collection. The Tenant states that she had to take small bags of garbage for disposal at and on her way to work.

The Tenant states that starting in the summer of 2017 and about once or twice a week the lower tenants would either block her from her parking spaces or would take them over completely.

The Tenant states that in the last seven or eight months the lower tenants started to shut off the water every time the Tenant would get into the shower. The Tenant states that they discovered the water valve in the laundry room and took great pleasure tormenting the Tenant with shutting off the water. The Tenant states that she would hear them laugh after her shower stopped. The Tenant states that she normally showered every day.

The Tenant states that the Landlord has not acted until recently. The Tenant states that she did not pursue any claims against the Landlord before this application as the Landlord would keep assuring her that the lower tenants would be evicted. The Tenant states that she believed the Landlord would act as stated. The Tenant states that after her application was served on the Landlord tried to evict her by telling her she had to move. The Tenant states that she is aware the Landlord cannot evict a tenant by simply telling them to leave. The Tenant claims \$34,098.00 and states that this amount is not based on anything.

The Landlord states that during 2017 the lower tenants were spoken to after every second or third complaint from the Tenant to the Landlord's son. The Landlord states that he is unaware of the number of complaints made by the Tenant during 2018 and that the son replied in person or by text to about 10 to 15 complaints. The Landlord

states that the lower tenants were not given any written warnings and that the son only texted them. The Landlord states that in January 2018 the Landlord verbally told the lower tenants to move out and that no notice to end tenancy was ever given to the lower tenants. The Landlord states that the water was not shut off and that the water pressure was only low. The Landlord states that he does not know if the water was shut off or when the water pressure was low. The Landlord's Legal Counsel indicates that he does not believe the facts are in dispute and submits that a review of past RTB Decisions indicates that compensation in these types of cases have been assessed at between 20 to 50% of the rent that was payable.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, freedom from unreasonable disturbance and use of common areas for reasonable and lawful purposes, free from significant interference. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. At the time of the application and according to the Tenant's evidence the Tenant would have been disturbed for a period of 14 months. The Tenant has claimed \$34,098.00. The Tenant has not provided any evidence of the basis for this claimed amount that equals a monthly amount \$2,435.57 and is a sum that is greater than the rent paid for the same period while the Tenant otherwise had full enjoyment of the unit. I consider this amount to be excessive.

Although the Tenant states that the disturbances occurred on a nearly daily basis for over a year I note that the Tenant's documentary evidence detailing the disturbances indicate that there were only about 9 instances of disturbances in 2017, and these occurred primarily over the summer. There are a significantly greater number of

disturbances detailed by the Tenant for the period January to March 31, 2018 and it appears from the documented instances that they occurred about once a week. It was during this time, according to the Landlord's evidence, that the Landlord started to act by telling the lower tenants to move. It appears that this initial weak action to March 31, 2018 may have actually contributed to the increased disturbances by the lower tenants. There was no evidence on the date of the lower tenant's move out however I note that the Tenant's emails indicate that the lower tenants were served with a notice to end tenancy on April 16, 2018 and that the lower tenants had turned off the Tenant's water and that it was left turned off for about a week in April 2018 before this notice was served. For the above reasons and as the Landlord appears to have accepted the facts of the disturbances, I find that the disturbances in 2017 were not as significant or as frequent as the disturbances in 2018 and I find that the Landlord was negligent in its response to the disturbances causing the Tenant a loss of quiet enjoyment to April 16, 2018. There is no evidence of disturbances past April 16, 2018 and I consider that the on April 16, 2018 Landlord took reasonable steps to provide the Tenant with quiet enjoyment and was not negligent after this date.

Although the Tenant did not amend its application to include a monetary claim for disturbances past the date of the application, I consider that ongoing disturbances can be reasonably anticipated in the circumstances and may therefore be reasonably included as part of the Tenant's monetary claim. The Tenant provided no evidence of any health or employment problems associated with any loss of sleep from the noise or the other disturbances and no evidence of any other losses being claimed for inclusion with the total claimed amount. As the Tenant otherwise had full enjoyment of the unit, I find that the Tenant has only substantiated a nominal sum of **\$200.00** for 2017 plus a sum that represents 25% of the rent paid for the period January 1 to March 31, 2018 in the amount of **\$1,181.25** ($\$1,575.00/4 = \393.75 , $\$393.75 \times 3 = \$1,181.25$) plus a sum a sum that represents 50% of the rent paid for 7 days in April 2018 in the amount of **\$183.75** ($\$1,575.00/30 = \52.50 per diem $\times 7 \times 50\%$) for a total of **\$1,565.00**.

As the lower tenants have moved out of the unit I consider that the Tenant's claim for an order that the Landlord comply has been met and I dismiss this claim. As the Tenant has been partially successful with its application I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,665.00**. The Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,665.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 14, 2018

Residential Tenancy Branch