



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting a monetary order for compensation in the sum of \$12,500.00.

The Tenant and his advocate “JG” appeared for the scheduled hearing. The Landlord did not call in, although I left the teleconference line open for 33 minutes to allow him to join the call which was scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing and that only the Tenant, his advocate and I called into the teleconference.

The Tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. He explained that the Notice of Hearing was sent by registered mail to the Landlord’s address; he resides in the same building as the Landlord. A tracking number was provided which confirmed the Landlord did not accept delivery.

The final evidence package and Notice was again delivered by registered mail to the Landlord on July 24, 2018 and another tracking number was provided. The Tenant states that the Landlord confirmed receipt of that second package when they spoke in the hallway recently. I am satisfied that the Notice of Hearing and evidence was properly served in accordance with section 89 of the Act and that service is deemed to have occurred five days after mailing, in accordance with section 90 of the Act.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issue to be Decided

Is the Tenant entitled to a monetary order for compensation or damages, pursuant to section 67 of the Residential Tenancy Act ("Act")?

Background and Evidence

This tenancy began in 2017; it is a rooming house with a shared bathroom facility. Rent is \$375.00 a month. The Tenant began having issues with two residents in neighboring rooms, one of whom may be employed by the Landlord to do work around the building. The issues were mainly about noise and disturbances, late into the night, which made it difficult or impossible for the Tenant to sleep through the night.

The Tenant brought an application against this Landlord which was heard on January 23, 2018, to address specific incidents which took place in 2017. In that claim, the Tenant asked for a monetary order for the Landlord's failure to address complaints regarding noise from these particular residents.

In his decision dated January 24, 2018, the Arbitrator states,

"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. "

The Arbitrator rendered a decision awarding the Tenant the entire amount claimed in the sum of \$62.50, having completed the following analysis:

"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. "

The Tenant filed this Application on February 1, 2018, after receiving the earlier decision. Both he and his advocate state that they were told in the previous hearing to file a new claim for this particular incident which occurred December 10, 2017, as the extent of the injury and required documentation was not available at the January hearing. As the disturbances continued, the Tenant decided to file this claim.

The Tenant is requesting monetary compensation of \$12,500.00 for the following: *"landlord was aware of my situation with neighbor, advised my landlord at least 3 times that the problem was getting worse. It escalated into violence on 11-dec-2017, was hospitalized next day"* He presented medical documents to confirm the extent of the injury, which included a badly dislocated shoulder and muscle damage.

The incident occurred around 10:00 p.m. on December 10, 2017, when the Tenant reports that the same two residents were talking and laughing loudly and playing the television at a high volume. The Tenant attempted to drown out the noise by turning on his radio to play music.

He states that the one resident came into his room, grabbed his radio and threw it into the hallway. He then grabbed the Tenant and threw him to the ground, just outside his door. He starting choking the Tenant and this went on for several minutes, the resident being younger and heavier than the Tenant. Eventually, the Tenant was able to wedge his elbow in between them, and the resident let go and left.

A friend called police, who attended at the scene but did not file a report or press charges. The Tenant thought his injury was not an emergency, but in the morning he

attended at the hospital in severe pain. The medical reports submitted into evidence confirm the extent of his injury and he was given pain medication and his arm placed in a sling after treatment.

At this point in time, he confirms it is a permanent injury and he has lost about 25% mobility in that arm. He went to the Landlord the day after the incident, explained what happened and the Landlord expressed little interest, stating that it was only a fight.

The Tenant kept detailed records of more incidents of loud noise and disturbances late at night, after midnight, on the following dates: January 31 (reported to Landlord), April 5 (reported to Landlord who took no action), May 1, May 4, May 31, June 1 (reported to Landlord who took no action) and June 28, 2018. Copies of these records were submitted into evidence.

The Tenant described next the incident on January 31, 2018; loud noise and running in the hallway, coming from the rental unit occupied by one of the residents, their door wide open; Tenant had difficulty sleeping, admits that noise travels but that the noise from these two particular residents continues to be late at night and pervasive. The Tenant filed a signed witness statement from a neighbor who reported the same disturbance that night to the Landlord, who took no action after receiving that complaint.

The Tenant went on to describe all of the other incidents he had recorded and submitted into evidence, each involving the same residents and the same types of disturbances which disrupted his sleep.

The Tenant states that he is frustrated with the Landlord's inaction and that he doesn't investigate the noise complaints. He expressed concern about living in the building with these two residents, who appear to be immune from any consequences. The Tenant shared details about how greatly his sleep is disturbed at night due to the unreasonable noise, his fear of confronting the other residents for threat of more violence, the culture of fear generally among residents due to the inaction of the Landlord, and even his fear of using the shared facilities, such as the washroom. The Tenant states that this has impacted his daily life to a significant extent and he fears that matters will continue to escalate due to the Landlord's inaction.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Landlord did not call into the conference call by 11:10 a.m., and I found the Landlord was properly served with Notice of the Hearing but did not attend, the hearing continued in his absence. The Tenant and his advocate were invited to provide evidence and give testimony and argument, all of which was undisputed.

In the January 24, 2018 decision, the Arbitrator concluded:

“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.”

In my decision, I am not considering or awarding any compensation for the specific incidents previously adjudicated on. Those incidents are res judicata and a monetary award has already been granted. However, the previous decision dated January 24, 2018 did not address the December 10th incident and I find that the Tenant was able to file this subsequent claim to request additional compensation for any ongoing breach. The previous decision warns that failure to comply with section 28 may result in additional monetary orders against the Landlord, and the evidence presented clearly suggests that the problems have continued well into 2018 despite the decision reminding this Landlord that he has an obligation to protect the rights of this Tenant.

Under section 7 of the Act, a party who fails to comply with the Act, regulation, or tenancy agreement must compensate the other party for damage or loss that results. To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss

The Tenant has submitted evidence to suggest that the noise and disruptions occurred again on January 31, 2018 from the same residents, which is verified by a signed

witness statement from another person who lives in the building. The year has continued with multiple incidents being recorded and some reported to the Landlord, with no investigation or action being taken.

Given this undisputed evidence, I am satisfied that the Tenant has proven that the Landlord continues to be in violation of section 28 of the Act, which reads:

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;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

I find that the presence of these offending residents not only seriously disturbs the other tenants, but there is evidence suggesting that it places this Tenant at risk of serious harm or injury. There is no evidence before me to suggest that the Landlord has taken any reasonable measures to address this situation. Accordingly, I am prepared to make a further monetary order against the Landlord for his failure to comply with section 28.

However, I am not satisfied that the \$12,500.00 requested as against the Landlord is justified; this Landlord failed to address the complaints, but the person who committed the assault would also carry the liability for the losses incurred as a result of that specific physical injury. In that respect, the Tenant may mitigate his losses by pursuing a claim for personal injury as against the resident. Accordingly, I am awarding this Tenant the sum of \$3,375.00 as a retroactive rent rebate for the Landlord's breach under section 28 for incidents from December 2017 to July 2018, based on the evidence before me and which was served on the Landlord.

The Landlord should be aware that a breach of section 28 is a serious matter, and that there will be further monetary orders if these disturbances continue or if he fails to address the concerns that have been reported to date.

This order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord

fails to make payment. Copies of this order are attached to the Tenant's copy of this Decision.

Conclusion

The Landlord shall pay the sum of \$3,375.00 forthwith to the Tenant.

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: September 19, 2018

Residential Tenancy Branch