Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRIBE MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord's representative at this hearing (the landlord) confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on October 25, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act.* Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses or other money owed arising out of this tenancy? Should any orders be issued against the landlord with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, including audio recordings, miscellaneous letters, texts and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

This tenancy for a fourth floor rental suite in a 97-unit, wood-framed rental building began as a one-year fixed term tenancy on October 3, 2017. At the end of that fixed term on October 31, 2018, the tenancy continued as a month-to-month tenancy. Monthly rent was initially set at $1,210.00, payable in advance on the first of each month. On November 1, 2018, the tenant's monthly rent increased to $1,257.00.

The tenant's October 24, 2018 application for a monetary award of $2,670.20 included a request for a retroactive reduction in their rent of $210.00 for twelve months for their loss of quiet enjoyment of their rental unit, totaling $2,520.00. The tenant also submitted copies of receipts totaling $50.21 for photocopying expenses incurred in preparing for this hearing.

The tenant testified that they have been lodging complaints with the landlord since February 2018 about the noise emanating from the neighbouring rental unit. Although most of the noise that the tenant finds objectionable comes from the neighbouring tenant's playing of loud music, the tenant also maintained that the neighbouring tenant stomps their feet on the floor repeatedly and makes other disturbing noises. The tenant testified that their initial attempts to deal with the noisy neighbouring tenant by banging on the wall between them achieved some reduction in the volume of music being played by the neighbouring tenant. However, as outlined in a series of emails commencing on March 9, 2018, the tenant raised concerns about the noise originating in the neighbouring unit with the landlord. When little action resulted from the tenant's ongoing attempts to resolve this matter, the tenant applied for dispute resolution to seek an effective resolution of their concerns, and to obtain a monetary award.

The landlord entered into written evidence a timeline of the attempts the landlord had undertaken to resolve the tenant's concerns. In addition to many conversations with the neighbouring tenant to convey concerns raised by the tenant, and on a few occasions requests for information from other tenants in this building, the landlord sent three warning letters to the neighbouring tenant on July 4, 2018, October 2, 2018, and November 19, 2018. Each of these letters advised the neighbouring tenant that their tenancy could lead to the issuance of a 1 Month Notice to End Tenancy for Cause (a 1 Month Notice) if they did not reduce the level of the noise and music originating in their

rental suite, which other tenants found objectionable. The last of these warning letters was described as a "Final Warning Letter."

Although the neighbouring tenant had apparently agreed to purchase headphones and use them when playing their music, an additional incident of loud music apparently occurred on the weekend prior to this hearing. On this occasion, both the tenant and the landlord's building manager heard the loud music coming from the neighbouring tenant's suite. The landlord said they had not yet spoken with the building manager, although they intended to do so on the day after this hearing. The landlord confirmed that if music could be heard almost 60 feet down the hallway at the elevator when the building manager exited that elevator, as the tenant maintained, that this may very well constitute sufficient evidence to issue a 1 Month Notice to the neighbouring tenant.

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 on the balance of probabilities that their claim is substantiated and that they are entitled to a monetary award from the landlord for any losses arising out of this tenancy.

Section 28 of the *Act* reads in part as follows:

> ***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;...*

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

I first note that the tenant's claim for a loss of quiet enjoyment for the 12-month period preceding their October 24, 2018 application would pre-date the time when they first notified the landlord of any problem. A landlord can only be held responsible for a loss of quiet enjoyment after having been given a proper opportunity to address any concerns raised in this regard. Since the tenant did not follow-up on their initial contact with the landlord until March 2018, I would not consider any possible claim from the tenant for a loss of quiet enjoyment for periods of this tenancy before March 2018.

At the hearing, I also advised the parties that the tenant's claim for the recovery of photocopying costs is a hearing-related cost. The only hearing-related cost that a party may be able to recover is the recovery of their filing fee for their application.

While the tenant has found their neighbour’s actions upsetting, the tenant bears the responsibility of demonstrating that the landlord has taken inadequate measures to address infringements upon the tenant's right to quiet enjoyment. In this case, most of the examples provided by the tenant of their neighbour's playing of loud music were during daytime hours or hours prior to 10:00 p.m.

The landlord has entered into written evidence detailed information regarding the conversations the landlord and the landlord's building manager have held with the neighbouring tenant in an attempt to address the concerns raised primarily by the tenant. The landlord has also discussed the situation with the neighbouring tenant frequently. On or about November 18, 2018, the landlord's conversations with the neighbouring tenant were successful in convincing the neighbouring tenant to purchase headphones and play music using these new headphones, which has apparently had some effect on reducing the level of noise coming from their rental suite.

While the tenant would like the landlord to have taken more effective action in this matter, there is undisputed written evidence that the landlord has been following this situation closely. The landlord has directed the building manager to make additional routine rounds of the tenant's floor each day to determine if the neighbouring tenant's music is beyond the level that is acceptable. Although the landlord has sent their building manager to the floor where these tenants live many times, until very recently the building manager has been unable to confirm that the music being played by the neighbouring tenant exceeded normal levels and would be disturbing to other tenants.

The landlord also contacted other tenants on this floor and those living below the neighbouring tenant to determine whether they too had concerns about the neighbouring tenant's playing of loud music. Although the landlord's contacts with these

tenants revealed some limited acknowledgement that this might be a problem, without more substantive evidence the landlord did not believe that there was sufficient evidence to issue a 1 Month Notice to the neighbouring tenant.

The landlord has also encouraged the tenant to contact the landlord's on-site building manager whenever music was being played loudly by the neighbouring tenant so that the building manager could assess the level of noise and disruption to other tenants' quiet enjoyment of the premises. While the tenant has placed a number of calls to the building manager, the tenant maintained that the building manager was either too late in arriving to check out these allegations or the neighbouring tenant discontinued playing the loud music before the building manager arrived. The tenant maintained that the level of noise and disruption caused by the neighbouring tenant has caused stress and reduced their level of quiet enjoyment of the premises.

Without significant evidence from other tenants in the building or the landlord's own building manager, the landlord has thus far been unwilling to take action beyond the three warning letters issued to the neighbouring tenant and provide the neighbouring tenant with a 1 Month Notice. I find that the landlord was likely correct in determining that the written evidence provided by the tenant and other tenants in this building thus far was insufficient to issue a 1 Month Notice to the neighbouring tenant.

I find that the measures taken by the landlord in this regard are appropriate under the circumstances, given that the tenant appears to be the only person continuing to complain about the neighbouring tenant's actions. Others in the building have not been pursuing this matter with the landlord and the tenant did not produce them or anyone else as witnesses, nor did the tenant provide recent letters of complaint from other tenants for consideration at this hearing.

Residing in a multi-unit, wood-framed rental building such as this one sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant’s right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required. I find that the landlord has taken a reasonable approach to address this matter with the tenant’s neighbour.

While I fully understand that the pace of the action being taken by the landlord has not been to the tenant's liking, this situation appears to be in the process of changing as a

result of the events of the previous weekend when the landlord's building manager also heard loud music being played by the neighbouring tenant. The landlord testified that as long as the landlord's building manager confirms the tenant's account of the noise levels that the building manager heard upon entering the tenant's floor from the elevator, the landlord may now have the independent confirmation to take action beyond the issuance of warning letters to the neighbouring tenant.

Under these circumstances, I find that the tenant has provided insufficient evidence to demonstrate that the landlord has failed to take appropriate action to follow up on the tenant's concerns about the neighbouring tenant. For these reasons, I dismiss the tenant's application for a monetary award for the loss of quiet enjoyment.

Conclusion

I dismiss the tenant's claim in its entirety without leave to reapply for any of the remedies sought by the tenant for the period preceding the tenant's application.

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: December 03, 2018

Residential Tenancy Branch