



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*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, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant's husband was present at the hearing, observing only, as he did not testify. This hearing lasted approximately 35 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2018. Monthly rent in the amount of \$1,450.00 is payable on the first day of each month. A security deposit of \$730.00 and a pet damage deposit of \$200.00 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties. The rental unit is the basement of a house, where the landlord occupies the upper floor of the same house, above the tenant.

The tenant seeks an order for the landlord to provide her with quiet enjoyment in the rental unit. The tenant was unsure of exactly what type of order she required but indicated that the landlord and his family were noisy inside their unit, which is directly above her basement rental unit. She said that the noise began on July 2, 2018, the day after she moved in on July 1, 2018. She claimed that it sounds like a "500-pound person" is walking on the floor above her with a "boom boom" sound. She stated that the landlord's grandchildren play and run in the unit and it is a constant "booming" sound. She explained that she has been awakened at 5:00 a.m. by this noise and that it often starts after midnight.

The tenant maintained that she has asked the landlord to "walk softer" and initially the landlord was compassionate and agreed it was noisy because of his father who is in his 80's and shuffles when he walks. She noted that the landlord later became upset and in the last month the noise has been twice as loud, since she said the landlord is attempting to intimidate her. She said that the landlord's grandchildren are using cars with wheels inside their unit on the hardwood floor and that they should be playing outside because it is too noisy inside.

The tenant seeks a monetary order for \$5,000.00 for a loss of quiet enjoyment. She provided a monetary order worksheet detailing her claims. She said that she is entitled to a past and future rent reduction of \$500.00 per month for 10 months, from August 2018 to May 2019. She stated that the \$500.00 is the difference in rent between her old rental unit at a different location with a different landlord, where she paid \$950.00 per month and it was quieter, as compared to her current rental unit with the landlord where she pays \$1,450.00 per month in rent. She agreed that since the beginning of her tenancy, the landlord has not attempted to raise her rent of \$1,450.00. She said that someone at the Residential Tenancy Branch ("RTB") told her to claim for this amount because she was not going to claim for it initially and she hesitated during the hearing as to whether she should claim for it given that "money doesn't matter."

The tenant claimed that her blood pressure increased, she needed new medications for anxiety and her diabetes was not in control because of the landlord's actions and the fact that she could not sleep due to the landlord's noise. The tenant did not provide medical or work records to show any of her losses, indicating that she did not know she was required to do so. She explained that the landlord told her when she moved in that the rental unit was quiet, and if he had told her that his grandchildren lived there and they were noisy, instead of claiming that he was not required to tell her who lived there, she would not have moved in.

The landlord disputes the tenant's claims. He stated that he and his family try to keep quiet inside their unit. He said that his grandchildren are respectable, and they were present when the tenant signed the tenancy agreement inside his unit. He stated that there was no stomping from his grandchildren and that they were present in the next room during the hearing and not making any noise. He claimed that the tenant was only after money from the landlord because she lost her job on November 11, 2018 and the tenant did not complain about any noise for four to five months after she began her tenancy, until she lost her job. The tenant said that she did not lose her job and she currently works three jobs.

The landlord noted that he offered the tenant both her security and pet damage deposits back and to cancel the one year fixed term lease, if she moved out of the rental unit because she was upset about the noise, but the tenant refused. He maintained that the tenant wanted one month free rent to move out. The tenant said that she wanted her moving expenses of \$517.00 back because she did not want to move again after recently moving and spending so much money to move into the rental unit. The

landlord explained that the tenant's husband told him that the tenant wanted to go to this arbitration hearing against the landlord.

The landlord submitted letters from his current tenants who live in the basement suite next door to the tenant, as well as from previous tenants in the rental unit as well as at the landlord's previous basement property, indicating that he was a good landlord and there was no noise that disturbed them due to the landlord above. The tenant challenged the landlord's letters, indicating that one was not signed by its author and that person moved because her husband's job was relocated, not because she was pregnant as claimed in the letter. The tenant agreed that she did not ask the landlord to produce his witnesses to cross-examine them about their letters at this hearing

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's entire application for an order to comply and for compensation of \$5,000.00, without leave to reapply.

I find that the tenant did not provide sufficient evidence to substantiate her monetary claim for \$5,000.00 and failed to satisfy the four-part test. The tenant did not provide written documentation such as receipts, invoices, estimates, paystubs, or other such documents to support her claims. She did not provide medical records to show that she suffered from stress or anxiety, sought treatment, or incurred costs for medications or other items, as a result of a loss of quiet enjoyment. She did not provide employment documents such as paystubs, a letter from her employer, or other such documentation to justify any missed time from work or difficulty performing her work duties. She is

comparing an unrelated unit in the past with a different landlord to a current unit with a different landlord in a different location.

I find that the tenant did not provide sufficient evidence that the landlord has caused her a loss of quiet enjoyment, requiring an order to comply. The tenant signed the tenancy agreement in the landlord's unit and his grandchildren were present during that time. The tenant was free to ask the landlord whether there were others living in the unit with the landlord but she did not do so. The tenant lives in a basement unit of a house, where the landlord and his family live above. A certain level of noise is to be expected in this situation, given the location of the unit directly above the tenant's unit. The landlord and his family are entitled to quiet enjoyment of their unit, including completing activities of daily living such as walking, children playing, and using the unit for different purposes. The tenant cannot decide where the children should play, what time they are entitled to do so, or whether the landlord can walk around or has to tiptoe in the unit. The rights of both parties must be balanced.

The landlord is required to provide quiet enjoyment to the tenant, particularly during the later night hours when people are expected to sleep. The landlord should be mindful of the City bylaws with respect to noise, which are outside the jurisdiction of the RTB. The tenant has not shown that the landlord has violated these noise bylaws and if he does, the tenant is free to contact the appropriate authorities within the City and the police.

As the tenant was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's entire 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 16, 2019

Residential Tenancy Branch