



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 30, 2018, wherein the Tenant requested monetary compensation from the Landlord in the amount of \$2,000.00 for breach of her right to quiet enjoyment, an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation* and the tenancy agreement and to recover the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on January 14, 2019.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord for breach of quiet enjoyment?
2. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation* or the tenancy agreement?
3. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that she originally moved into the rental building in a bachelor apartment June 15, 2018. She stated that she had to move from the bachelor apartment because the neighbours were very noisy and disrespectful and the bills were very high.

The Tenant confirmed that the Landlord facilitated her move into the subject Rental Unit in September of 2018.

In the within action, the Tenant seeks return of 50% of the rent she has paid for the Rental Unit due to what she considers to be the Landlord's breach of her right to quiet enjoyment. She confirmed that her current rent is \$875.00.

In her application, the Tenant indicated she sought the sum of \$2,000.00.

The Tenant applied for dispute resolution on November 30, 2018 such that she paid \$2,625.00 in rent from September 1 to November 30, 2018. When I brought it to her attention that 50% of this rent would be \$1,312.50 she confirmed that is the figure she is seeking in terms of monetary compensation. She further confirmed that the \$2,000.00 claimed on her application included all the rent she paid, including the rent for the bachelor apartment.

The tenant also sought compensation for administrative costs such as a USB and registered mail costs. The Tenant was informed those costs were not recoverable under the *Residential Tenancy Act*.

The Tenant stated that the reasons she seeks return of 50% of her rent due to the fact that the upstairs neighbour makes a constant banging noise from 10:00 p.m. to

midnight. She stated that it sounds as though the Tenant is bouncing a ball on the floor. She claimed it occurs throughout the day as well, but the most problematic time is the evening when she is trying to sleep.

The Tenant confirmed that she brought this to the Landlord's attention. She also spoke to S., who the Tenant believed was the manager/caretaker.

The Tenant confirmed that she did not speak to the upstairs neighbour, although she did write him a letter. A copy of that letter was provided in evidence.

The Tenant claimed that no one has asked to come and listen to it or investigate it whatsoever.

The Tenant submitted in evidence a recording of the noise from the upstairs neighbour. This recording was 1 minute and 53 seconds long. The Tenant testified that she provided a copy of this recording to the Landlord. She stated that she has not had any discussions with the Landlord since she provided him with this recording.

The Tenant stated that the Landlord told her that if she doesn't like the noise she should move out. He also told her that the previous tenants did not complain about the upstairs neighbour.

In response to the Tenant's claims, the Landlord testified as follows. He submitted that the Tenant's characterization of him not doing anything about this was inaccurate.

The Landlord testified that the first time he was aware that there was an issue was when he received a copy of the letter the Tenant wrote to the upstairs neighbour. He was very bothered by the contents of her letter which he described as aggressive.

Introduced in evidence was a copy of the letter the Tenant sent to the upstairs neighbour in which she wrote as follows:

"This letter is to bring to your attention a number of problems with extremely loud an unnecessary noise coming from your apartment.

Your constant Stomping needs to stop! Seriously you sound like an elephant the way you stomp around at all hours of the day and night.

Your constant knocking which sounds like you are bouncing a ball needs to stop! You think this is okay to do at all hours of the night especially.

The constant scraping of your furniture on the floor is really starting to piss me off as well.

I believe that you do all of this on purpose because you think you can do whatever you want since you have lived in this building for a long time! Well guess what, You CAN'T!!!! It doesn't matter how long you have lived here and I really don't care either.

If you don't stop all of this constant and disturbing behavior, I will be contacting [Landlord] in writing. I will also contact the By Law Officers as they can give you a fine for being a neighbor who acts the way you do.

You have woken me up many times and I am sick of it! I know you get pissed off when other people bother you, so stop being a hypocrite and act like an adult instead of a spoiled child!

Do you understand? I will do everything in my power to stop your absurd behavior! You are the most ignorant neighbor I have ever had in my life! I've lived in buildings that have 25 floors and NEVER encountered someone who is as noisy as you!

I suggest you read up on the rental laws because you can be evicted for what you are doing!

I have complained about you to the management and they are aware of what you are doing. From now on it will be in writing since this is better evidence in case I need it for legal purposes. This is no joke and you need to take this seriously!

The Landlord stated that immediately upon receiving a copy of the Tenant's letter he spoke with the upstairs neighbour. He confirmed that the upstairs neighbour was very upset by the contents of the letter, was very apologetic and was almost crying.

The Landlord noted that the upstairs neighbour had been there for years and they had never received any complaints about him from other tenants. He said that he knew he needed to figure out what was going on as the only issue they could think of was that it was plumbing noises, as they had never received complaints about this tenant before.

The Landlord testified that he investigated the situation by sitting outside the rental unit door and listening for the noises, as well as sitting outside the neighbour's door. He claimed that the Tenant forbade him from going in the rental unit to investigate this situation, noting that he tried to go in her rental unit on November 27, 2018 and the Tenant refused.

The Landlord denied telling her that if she didn't like it she could move out. He stated that on November 27, 2018, he hand delivered a letter to her telling her that he would

investigate but she refused him entry. He also confirmed that he told the Tenant that if she was unhappy he would relieve her of her lease obligations.

The Landlord stated that following this discussion the Tenant told him that she would only deal with him in writing.

In terms of the audio recording, the Landlord conceded that it sounded like some sort of thumping but he also stated that he did not know when the recording was made or where.

The Landlord submitted that the Tenant's issues with noise is longstanding. He testified that he spoke to the Tenant's previous Landlord who confirmed that the Tenant also complained about noise in that rental unit.

The Landlord confirmed that the Tenant complained about noise in the bachelor unit as well and that he moved her in good faith and did it as a favour to her to try to help her, even though he had someone else who was interested in the subject Rental Unit.

The Landlord stated that he has been in the upstairs rental unit numerous times at various times of day, he has also listened outside the upstairs rental unit and the subject rental unit door and he has not heard the thumping complained of by the Tenant.

The Landlord stated that he spoke to the neighbour above and beside her as well and they have not heard the noise complained of by the Tenant.

The Landlord confirmed that he has been a landlord for 30 years. He also stated that he has managed this building in particular for 10 years. He also confirmed that the upstairs neighbour has been there for 18 years and aside from this Tenant he has never had any complaints about that tenant.

In reply, the Tenant confirmed that she left her previous tenancy due to noise complaints and was only there for six months. She claimed that the tenancy before that was one year, and prior to that she lived in an apartment building for three years in another province.

The Tenant stated that she has tried to use ear plugs but they fall out of her ears. She stated that she was not aware that ear plugs could be custom made for her. She has also tried sleeping with a fan as a means to create "white noise" and block out the sound.

Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove her claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The Tenant claims monetary compensation equivalent to return of half of the rent payments made on the basis that she believes the Landlord has failed to protect her right to quiet enjoyment; specifically, she alleges she is regularly disturbed by thumping noises from the rental unit above hers.

The Landlord confirms the Tenant has brought this to his attention, however, he submits that he has not been able to corroborate her claims. Although not specifically argued, he suggests the Tenant is sensitive to sound as she complained of noise in the bachelor unit she originally moved into, as well as in her previous accommodation outside of the rental building.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

Protection of tenant's right to quiet enjoyment

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.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

“ ...

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

...

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

...

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

...

After careful consideration of the evidence, and the testimony of the parties, I find the Tenant has failed to prove the Landlord breached section 28 of the *Act*.

I am unable, based on the evidence before me, to find that the neighbour in the rental unit above the subject Rental Unit is making excessive noise, or that the Landlord has failed to respond appropriately to the Tenant's concerns.

As discussed during the hearing, sounds from other occupants in multi-unit buildings will be audible to others. In this case I find it likely that the Tenant is particularly sensitive to the sounds of others, as evidenced by the fact she had problems with sounds in her three most recent tenancies. Should the Tenant continue to live in multi-unit buildings,

she is encouraged to consider purchasing ear plugs which are specifically made for her and which may alleviate her concerns with noise from others.

Although the Tenant provided an audio recording of thumping sounds, and testified as to the date and time the recording was alleged to have been made, I find it possible the sounds audible in the recording were not coming from the upstairs unit. I note that the Tenant refused the Landlord's request to enter the rental unit and investigate the sound from inside.

I find that the Landlord responded to the Tenant's concerns appropriately, investigated the source of the alleged sound, spoke with other occupants of the rental building, and satisfied his obligation to protect her right to quiet enjoyment. In doing so I find the Landlord took reasonable steps to address the Tenant's concerns. I also accept the Landlord's evidence that he did not hear the alleged noise, nor has he received complaints from any other tenants or occupants of the rental building about the neighbour above the subject rental unit.

In all the circumstances, I find the Tenant has failed to submit sufficient evidence to support her claim.

I therefore dismiss the Tenant's claim for monetary compensation in the amount of \$2,000.00 as I find she has failed to prove her tenancy has been devalued due to the Landlord's actions or inaction with respect to her concerns about noise from others.

As I have found the Landlord responded reasonably to her concerns, I also dismiss her request for an Order that the Landlord comply with the *Residential Tenancy Act*.

Having been unsuccessful in her claim, the Tenant is not entitled to recovery of her filing fee.

I find the contents of the letter provided by the Tenant to the upstairs renter to be disproportionate and unnecessarily aggressive, and counterproductive to positive relations with her neighbours. The Tenant is cautioned to communicate her concerns to the Landlord as that such letters could be construed as unreasonably disturbing other occupants.

Conclusion

The Tenant's claim is dismissed.

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 23, 2019

Residential Tenancy Branch