



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT, FFT

Introduction

On December 6, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On December 7, 2018, the Tenant amended his Application seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*.

The Tenant attended the hearing and A.D. attended the hearing as an agent for the Landlord. All parties provided a solemn affirmation.

The Tenant advised that he served the Landlord the Notice of Hearing package, his amendment, and his evidence by hand and the Landlord confirmed receipt of this on December 7, 2018. As well, the Landlord confirmed that he could review all the digital evidence provided by the Tenant. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord received this package and that the hearing could continue. Furthermore, I am satisfied that all of the Tenant’s evidence will be accepted and considered when rendering this decision.

The Landlord advised that he served the Tenant with his evidence by email and by leaving a copy on the Tenant’s porch at the beginning of January 2018. The Tenant confirmed that he received this evidence, that he reviewed it, and that he was prepared to respond to it. As such, I am satisfied that the Landlord’s evidence will be accepted and considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to an Order for the Landlord to comply?
- Is the Tenant entitled to monetary compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on March 1, 2015 and that rent was established at \$884.00 per month, due on the first day of each month. A security deposit of \$400.00 was paid.

Both parties acknowledged that they have been involved in a previous Dispute Resolution proceeding and the issues between the parties are ongoing (the relevant file number is on the first page of this decision).

Tenant submissions

The Tenant advised that there has been an ongoing noise issue coming from the downstairs tenant since the end of 2016. He stated that he made the Landlord aware of this in early 2017 and was told to document the instances of noise, which he sent to the Landlord. He submitted that he applied for Dispute Resolution with respect to the noise issue and a settlement decision was reached on June 5, 2018.

As per this agreement, the Landlord arranged to meet with the Tenant and the downstairs tenant on June 22, 2018 to discuss the noise issues. The downstairs tenant gave the Tenant his phone number so that he could be reached if there was a noise concern.

The Tenant stated that there were no noise issues for a few weeks and advised that the Landlord became unresponsive to other issues, such as a toilet repair that he requested be fixed. He submitted emails demonstrating that he had to contact the owner to have the toilet repaired.

The Tenant stated that the noise issues eventually continued again, and he emailed the Landlord in November 2018, but the Landlord did nothing, so he eventually called the police and subsequently filed for Dispute Resolution. In one instance, the downstairs tenant invited the Tenant downstairs to listen and gain a different perspective with respect to the significance of the alleged noise. However, the Tenant declined this offer as he “did not feel like he could trust them”.

The Tenant advised that the Landlord has not provided evidence of attempting to resolve this issue in the last six months and referred to the videos that he submitted into evidence to illustrate the level of noise at differing hours. He also cited his noise complaint log to support his position. He stated that he can hear the downstairs tenant's music over his own television.

Landlord submissions

The Landlord advised that he has not been ignoring the Tenant and has been in contact with the owner about the Tenant's concerns. He stated that he was not advised of any noise complaints until he received a complaint from the Tenant on October 3, 2018. He emailed the downstairs Tenant to caution them about their noise level and he did not receive any further contact from the Tenant, so he assumed this matter was dealt with. He submitted into evidence emails from the downstairs tenant stating that they are accommodating the Tenant's concerns but that his complaints are mostly during the day.

He then advised that he received another complaint at the end of November 2018 and he submitted emails from the downstairs tenant stating that they turn down their music when texted by the Tenant, that sometimes they are not even home when the Tenant complains, and that they have made numerous efforts to accommodate the Tenant, but he is being unreasonable. He even invited the Tenant down to listen; however, the Tenant declined this offer.

The Landlord stated that the owner, who works in the office nearby, offered to go and listen to any noise complaints in April 2018 and onwards; however, the Tenant never took the owner up on this offer.

Tenant submissions

The Tenant confirms that the noise is always coming from the downstairs tenant as he can determine the direction it is coming from and it is always the same type of music. He submits that he complied with the settlement agreement and texts the downstairs tenant when there is an issue and it is clear that they can lower their music as they do so after he texts them.

He confirmed that the owner offered to listen to any noise issues; however, the Tenant did not want anyone in his bedroom, so he never requested this of the owner. Instead, he recorded any incidents of noise on his phone and submitted these videos as evidence.

He advised that, based on a prior Residential Tenancy decision, he is seeking similar compensation equivalent to \$50 per noise complaint. According to his evidence submitted, he is seeking this compensation for 74 separate, ongoing incidents totalling **\$3,800.00**. As well, he is

seeking recovery of the **\$100.00** filing fee of the June 5, 2018 hearing as he was advised by the Arbitrator that he could recover this fee in a subsequent hearing.

Landlord submissions

The Landlord stated that he has contacted the downstairs tenant anytime he has been made aware of any complaints and he finds it odd that there are complaints when the downstairs tenants are not even home. He submits that it could be possible that the noise may be coming from another unit and he has talked with other units. The Tenant did bring up concerns with other tenants in the building and the Landlord addressed those issues.

He stated that every time the Tenant brings up a concern about noise, he addresses it with the downstairs tenant. In addition, he visited the downstairs tenant once and found the unit to be sparsely furnished so he advised the tenant to purchase furnishings and curtains to reduce any noise transfer, which they complied with.

The Landlord stated that the Tenant has not provided evidence to corroborate the dates and times in his log of noise issues and that it could be inaccurate as the downstairs tenant is sometimes not there, contrary to the log. He advised that he has been doing as much as he can to deal with this issue.

Analysis

With respect to the Tenant's reliance on a previous decision to support his arguments, I find it important to note that I am not bound by or obligated to follow any past decisions.

This decision is based upon consideration of the evidence before me and I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 28 of the *Act* outlines the Tenant's right to quiet enjoyment and states that the Tenant is entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29, and use of common areas for reasonable and lawful purposes, free from significant interference."

Policy guideline # 6 outlines the covenant of quiet enjoyment and states the following:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord

was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

With respect to an Order to Comply and the issue of monetary compensation, I find it important to note that Policy Guideline # 16 outlines that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

The burden of proof is on the Tenant to substantiate the legitimacy of his claims. I acknowledge that he has provided evidence to substantiate that there were, in his opinion, ongoing noise issues. However, I find it important to note that most of the times of these complaints fall within what I would consider to be reasonable hours during the day for noise to be generally accepted. Furthermore, I have listened to the Tenant's videos that attempt to demonstrate the excessive noise levels, but most of the audio is difficult to hear and I would not deem the levels, in a majority of them, to be considered excessive or unreasonable. Moreover, most of these videos do not indicate what time these incidents occurred.

When assessing if the Landlord failed to comply with the *Act*, the consistent and undisputed evidence before me is that since the Dispute Resolution hearing of June 5, 2018, the Landlord complied with the settlement agreement and scheduled a meeting with the affected parties to discuss the situation, and he had the parties work out their differences amicably. Furthermore, the Tenant had been provided with the downstairs tenant's phone number so any concerns could have been dealt with between the two parties. Moreover, when the Tenant informed the Landlord of noise issues on October 3, 2018 and November 24, 2018, the Landlord had

provided evidence that he had taken steps to investigate the noise complaints and caution the downstairs tenant.

In addition, as part of this investigation, the Landlord offered to be present at the Tenant's rental unit whenever there was a noise issue to listen and determine if it was unreasonable. However, the Tenant declined to inform the Landlord or allow the Landlord access so that any complaint could be verified.

While I acknowledge the frequency of the Tenant's documented complaints in his log and texts, when sharing a property, a reasonable amount of noise cannot be avoided and should be expected. While the Tenant alleges that there were significant, continual breaches of his quiet enjoyment, the Landlord has provided evidence that steps were taken to address these issues when notified by the Tenant. In addition, in my view, the Landlord must have the opportunity to investigate both sides of the dispute to determine if a complaint is legitimate and that the noise is unreasonable, and then have the opportunity to take the appropriate course of action. However, I find that the Tenant intentionally prevented the Landlord from establishing the legitimacy of these complaints. This, in my opinion, demonstrates that the Tenant did not act reasonably to minimize the damage or loss. In addition, I am not satisfied from the evidence presented that the breaches the Tenant has portrayed were as significant as he alleges.

The burden of proof is on the Tenant to substantiate the justification, significance, and legitimacy of his claims. However, based on the evidence before me, I am not satisfied that the Landlord failed to take reasonable steps to attempt to correct the situation or failed to comply with the *Act* when notified of a problem. As such, I find that the Tenant has not met the onus of proving this claim and as a result, I dismiss it in its entirety.

With respect to the Tenant's claim to recover the filing fee for the previous Dispute Resolution proceeding, I find it important to note that the Arbitrator in that decision noted that "Since the parties have settled this dispute I decline to order that the tenant recover the filing fee from the landlord." In my view, this decision clearly indicates that recovery of the filing fee has been waived as the parties settled their dispute. Furthermore, there is no indication that the Tenant be permitted to seek this compensation in a future hearing. As such, I dismiss the Tenant's claim on this issue in its entirety.

As the Tenant was unsuccessful in his claims, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant's Application 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 30, 2019

Residential Tenancy Branch