



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT OLC

Introduction

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

- a monetary order for compensation for loss, 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 of the *Act*.

The landlord was represented by their agents WM and AM. Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were received in accordance with section 88 of the *Act*.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed 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 cost of the filing fee from the landlord for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on August 15, 2018, and ended on December 17, 2018. Monthly rent was set at \$695.00.

The tenant is making a monetary claim in the amount of \$3,500.00, which the tenant testified was for the loss of quiet enjoyment and other expenses related to this tenancy.

Item	Amount
Loss of Quiet Enjoyment and Other Expenses	\$3,500.00
Total Monetary Order Requested	\$3,500.00

The tenant testified in the hearing that the landlord failed in their duty to address an issue with the tenant's upstairs neighbour making excessive noise. The tenant testified that she would return from work, and could not sleep due to the noise, which took place late at night. The tenant requested to be moved to another rental unit, which was refused by the landlord. The tenant submitted a doctor's note in her evidentiary materials, as well as her written request for a different rental unit. The doctor's note dated November 23, 2018 states: "The above-named patient finds herself in a terrible situation in her current place of residence, which is resulting in stress-induced symptoms." The tenant filed this application a few days later, and moved out a few weeks after this. The tenant requested that the landlord pay for her moving costs, which was refused. The tenant feels that the landlord has been very cruel, and refused to address the matter.

The landlord's agent AM testified in this hearing that he was the building manager, and lives on site. AM testified that he had investigated the matter, and took it very seriously. AM spoke to the tenants in the unit upstairs. AM testified that he had lived in the exact same rental unit as the tenant in June 2017 to January 2018, and did not hear any noise. AM testified that the previous tenants and current tenant have never complained about any noise. The landlord testified that the only times that they could not investigate the matter was late at night when the tenants were sleeping, and they could not wake them up. The landlord feels that they did their due diligence by investigating the matter, and feel that the tenant's request for a different rental unit was not justified as there was a waiting list, and a policy of no in-house transfers unless for a valid reason.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

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...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I have considered the testimony of both parties, and while I am sympathetic that the tenant suffered from stress during this tenancy, the onus still falls on the applicant to support their claim. I find that the landlord has fulfilled their obligations as required by the *Act*, and provided several examples of how they had investigated the matter. I am not satisfied that the tenant had provided sufficient evidence to show that the landlord had failed in their obligations. I have considered the fact that this is a multi-unit complex, where it is difficult to ascertain the origin of noise, and in light of the fact that the landlord is bound by limitations when relocating a tenant to another rental unit, I am not satisfied that the tenant had provided sufficient evidence to show that this was a feasible solution or obligation of the landlord.

I find there is insufficient evidence for me to make a finding that the landlord had failed to meet their obligations regarding this matter. I find that the tenant has not met the burden of proof to support her claim as set out above. Accordingly, I dismiss the tenant's monetary claim without leave to reapply.

As this tenancy has ended, and as I find the tenant had not provided sufficient evidence of how the landlord had failed in their obligations, I dismiss the tenant's application for the landlord to comply with the *Act* and tenancy agreement.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the tenant's application for recovery of the filing fee.

Conclusion

I dismiss the tenant's entire 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: May 9, 2019

Residential Tenancy Branch