



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT OLC

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order for 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 had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67?

Is the tenant entitled to an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenant testified that he moved into the rental unit in late-April 2018. The monthly rent is \$875.00. The rental unit is a portion of the basement in house. There is a neighbouring tenant in an adjacent rental unit in the basement and there is another neighbouring group of tenants residing in a rental unit above the basement.

Both parties testified that a family with children lived in the house above the rental unit when the tenant moved in. The tenant testified that he was not disturbed by noise when the family lived upstairs. However, the landlord testified that the tenant did not complain about noise from the upstairs tenant.

The family moved out of the upstairs unit in mid-July 2018 and a group of four university students moved in upstairs.

The tenant first complained to the landlord of noise coming from upstairs in September 2018. The tenant described the noise as sounding like heavy footsteps and the moving of furniture around. The landlord testified that she contacted the upstairs residents and told them that the tenant was complaining about loud noise. The landlord told the tenant that he should go upstairs and discuss the issue with the upstairs residents.

The tenant testified that the noise persisted and he complained to the landlord and the residents upstairs. The tenant said that the residents upstairs stated that they were not making exceptional noise and they were just performing normal household activities such as walking around. The landlord testified that the residents upstairs did try to minimize the noise by exercising at times when the tenant was not home.

The tenant testified that the noise has continued to persist. The tenant is requesting compensation in the amount of \$7,000.00 for loss of quiet enjoyment. This is based on a request for compensation in the amount of \$875.00 per month from September 2018 to April 2019.

The landlord testified that she did everything she could to accommodate the tenant. She testified that she discussed the noise issue with the residents upstairs and asked them to keep the noise down. The landlord testified that she spoke with resident in the neighbouring basement rental suite and they told her that they were not disturbed by noise from upstairs. The landlord stated that the neighbouring basement tenant did hear

noise from upstairs but it was not excessive. However, the landlord acknowledged that the tenant's rental unit may have more noise than the neighbouring basement suite.

Analysis

Section 28 of the *Act* provides that tenants are entitled to quiet enjoyment including the right to freedom from unreasonable disturbance.

Residential Tenancy Branch Policy Guidelines No. 6 discusses the right to compensation for breaching the entitlement to quiet enjoyment:

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the *Act*. In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Based upon the testimony of the parties and the evidence submitted, I find that the tenant has not submitted satisfactory evidence to establish that the landlord has breached the tenant's entitlement to quiet enjoyment of the rental unit.

I am satisfied that the tenant has been disturbed by noise from the residents upstairs. However, section 28 of the *Act* requires that this disturbance be unreasonable. I do not find that the tenant has proven that the noise disturbances in the rental unit are unreasonable.

The entitlement to quiet enjoyment does not guarantee a tenant the right to silence in their rental unit. Some noise is unavoidable in a multi-unit dwelling, especially with residents living above the rental unit. In this matter, I find that the tenant has not provided satisfactory evidence to establish that this disturbance is unreasonable.

Accordingly, I dismiss both the tenant's application for an order for the landlord to comply with the *Act*, regulation or tenancy agreement and the tenant's application for compensation for breach of his entitlement to quiet enjoyment.

Since the tenant has not prevailed in this matter, I deny his request for reimbursement of the filing fee.

Conclusion

I dismiss the tenant's application for an order for the landlord to comply with the *Act*, regulation or tenancy agreement.

I dismiss the tenant's application for an order for compensation for breach of his entitlement to quiet enjoyment.

I dismiss the tenant's application for recovery of the filing fee.

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: June 04, 2019

Residential Tenancy Branch