



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP and
[tenant name suppressed to protect privacy]

DECISION

FFT, RR

Dispute Codes

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 01, 2019 (the "Application"). The Tenant applied to reduce rent for repairs, services or facilities agreed upon but not provided and for reimbursement for the filing fee.

The Tenant appeared at the hearing. The Agent appeared for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant advised at the outset that he is moving out of the rental unit but is seeking a past rent reduction.

The Tenant submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and Tenant's evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to a past rent reduction for repairs, services or facilities agreed upon but not provided?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. There is a written tenancy agreement between the Landlord and Tenant in relation to the rental unit. The tenancy started July 01, 2017 and was for a fixed term of one year then became a month-to-month tenancy. Rent was \$1,300.00 per month from July 01, 2018 to July 01, 2019. Since July 01, 2019, rent has been \$1,332.50. Rent is due on the first day of each month.

The Tenant sought \$4,000.00 as a past rent reduction due to a loss of quiet enjoyment.

The Tenant testified as follows. In August of 2018, the Landlord installed hardwood flooring in the unit above him. He can hear the flooring squeak when people walk on it. He can hear the noise throughout his rental unit. The noise is very loud and constant. He goes to bed at 8:00 p.m. The tenants in the upper unit go to bed around 11:30 p.m. or midnight. He cannot sleep because of the noise. He works as a driver and the lack of sleep has impacted his work. He gets nervous from the creaking and noise. He cannot watch television without hearing the creaking. He was unable to stay in the rental unit because of the noise and gave notice ending the tenancy for the end of August. He did not want to move but had to because of the noise.

The Tenant further testified as follows. He notified the Landlord of this issue in November of 2018. A representative for the Landlord said they could not do anything about it at that time because it was the holiday season. In January, he contacted the Landlord again. A representative for the Landlord came to investigate and agreed the noise caused by the flooring was louder than it should be. The representative said he would contact the contractors who did the flooring. He contacted the representative again who said repairs to the flooring were not in the budget. On August 21, 2019, the Landlord had contractors come investigate the noise. He believes the Landlord is now addressing the issue because he is moving out and the Landlord has raised the rent for the next tenant.

The Tenant sought a 30% reduction in his rent from December of 2018 to August 31, 2019. He calculated this to be \$390.00 per month totalling \$3,510.00. The Tenant said the remaining amount sought is based on cleaning and moving costs.

The Tenant acknowledged he still lived, slept and cooked in the rental unit throughout the period from December of 2018 to August of 2019.

The Tenant submitted two videos of the noise. The Tenant submitted an email he sent to the Landlord November 28, 2018 about this issue.

The Agent for the Landlord testified as follows. A new tenant moved into the upper unit in August of 2018. The old carpet in the upper unit had been replaced with wood flooring which cost \$3,500.00. Three months later, the Landlord received a complaint from the Tenant about the noise. The tenant in the upper unit is a heavy-set male. The wear and tear on the floor is occurring faster than normal.

The Agent further testified as follows. The Landlord had a vendor check the floor. This vendor said it would cost \$4,000.00 to address the issue. This was out of the budget because the \$3,500.00 originally spent was supposed to cover the flooring for years. The Landlord contacted a second vendor who did not show up. The Landlord found a third vendor last month and received a quote to address the issue three weeks ago. To address the issue, everything must be removed from the rental unit for two days. The tenant in the upper unit refuses to remove his belongings. The Landlord cannot force the tenant in the upper unit to go on a diet to lessen the noise. The Landlord cannot force the tenant in the upper unit to move his belongings out of the unit. The Landlord is not able to do the work until October.

The Agent acknowledged that the noise in the rental unit from the flooring in the upper unit is louder than it should be and is a problem. She said she empathises with the Tenant about this issue. She submitted that the Landlord did their best to address the issue.

Analysis

Section 65 of the *Residential Tenancy Act* (the “Act”) states:

65 (1) Without limiting the general authority in section 62 (3)...if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders...

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

Rule 6.6 of the Rules of Procedure states that it is the party making the claim that has the onus to prove it.

Section 28 of the *Act* sets out a tenant's entitlement to quiet enjoyment which includes the right to be free from unreasonable disturbance.

Policy Guideline 6 deals with the entitlement to quiet enjoyment and states in part:

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 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...

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.

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 RTA...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.

Based on the testimony of the Tenant and video evidence, I accept the Tenant can hear noise from the flooring in the upper unit when someone walks on it. I also accept the noise is louder than the noise one would expect to hear in an apartment building. I find this based on the Tenant's testimony and video evidence. I find this is supported by the Agent's acknowledgement that the noise is louder than it should be and is a problem. I find it is also supported by the fact that the Landlord intends to fix the flooring as it does not make sense that the Landlord would do so if there was no issue or if the noise was the usual noise one would expect to hear in an apartment building.

I accept the noise has been an issue since August of 2018 as the parties agreed this is when the flooring in the upper unit was installed. I accept the Tenant alerted the Landlord to the issue in November of 2018 as the parties agreed on this. I accept the issue was ongoing at the time of the hearing as the Agent testified that the flooring would not be fixed until October. I find the Tenant had to endure the noise for nine months after letting the Landlord know it was an issue.

Given my comments above, I accept the noise amounted to an unreasonable disturbance. I accept the testimony of the Tenant that the noise occurred when someone walked in the upper unit. I did not understand the Agent to dispute this. I therefore accept the noise amounted to a frequent interference. I also find it amounted to an ongoing interference as the Tenant had to deal with the noise for nine months after letting the Landlord know it was an issue.

I am not satisfied the Landlord took reasonable steps to address the noise issue.

It is not sufficient for the Landlord to take the position that addressing the issue was out of their budget. This is not an acceptable excuse for failing to protect the Tenant's right to quiet enjoyment. It does not relieve the Landlord of their obligations in this regard.

I find nine months to be a long time to deal with this issue and find it was an unreasonable amount of time. The Agent submitted that the Landlord did their best to address the issue. She testified about steps the Landlord took to find a vendor to fix the flooring. Yet, the Landlord submitted no documentary evidence showing when they contacted vendors about fixing the flooring or what they did to move the process along in a timely manner. In the absence of such evidence, I do not accept that the Landlord took all reasonable steps to correct the issue.

I also find the timing of the Landlord finding a vendor to fix the flooring concerning given it coincides with the Tenant vacating the rental unit and presumably a new tenant moving in. This causes me to question whether the Landlord did what they could to have the flooring issue addressed earlier. In the absence of evidence to support the Agent's testimony about what the Landlord did, I am not satisfied the Landlord fulfilled their obligation to protect the Tenant's right to quiet enjoyment.

I find the Landlord breached section 28 of the *Act* as I am satisfied the Landlord was aware of the noise issue in November of 2018 and am not satisfied the Landlord took reasonable steps to address the issue in a timely manner.

I accept the Tenant's testimony that the noise affected his sleep and negatively impacted his enjoyment of the rental unit. I did not understand the Agent to dispute this aspect of the Tenant's testimony. Further, there was no dispute that the noise was louder than usual and a problem. Therefore, I accept that it impacted the Tenant in some of the ways he mentioned. I find the Tenant did suffer loss in this regard.

There was no issue that the Tenant advised the Landlord of the problem in November of 2018. I find the Tenant minimized his loss by alerting the Landlord to the issue.

The Tenant has sought a past rent reduction of \$4,000.00. I am not satisfied based on the evidence provided that the Tenant is entitled to this amount. The Tenant still resided in the rental unit and was able to use all aspects of the rental unit despite the noise. Although I accept the noise amounted to a breach of the right to quiet enjoyment, I am not satisfied based on the evidence that it was so excessive it resulted in a 30% reduction in the value of the tenancy. I find this to be a substantial amount and would expect strong evidence to support such a reduction. The Tenant has only submitted two video clips of the noise. I do not accept that the noise had an impact on the Tenant's work in the absence of further evidence supporting the Tenant's testimony in this regard.

The Tenant has based part of his claim on cleaning and moving costs. These costs are very rarely recoverable as the rental unit is not the Tenant's property and therefore the Tenant would have incurred these costs at some point regardless of the breach.

Based on the evidence, I find it reasonable to reduce the Tenant's past rent by \$100.00 per month. I find this amount is significant enough to compensate the Tenant for the loss described. I find this amount is justified given the length of time the Tenant had to endure the noise. I award the Tenant a past rent reduction of \$900.00.

Given the Tenant was successful in this application, I award him reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$1,000.00. I issue the Tenant a monetary order in this amount.

Conclusion

The Tenant is entitled to a past rent reduction of \$900.00. The Tenant is entitled to reimbursement for the \$100.00 filing fee. In total, the Tenant is entitled to \$1,000.00 and is issued a monetary order in this amount. This Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 04, 2019

Residential Tenancy Branch