



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT

Introduction

On December 6, 2019, the Tenant made an Application for Dispute Resolution seeking an Order to comply pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”) and seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

The Tenant attended the hearing with A.A. attending as a witness for the Tenant. The Landlord attended the hearing as well, with J.K. attending as an agent for the Landlord. All parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing package was served to the Landlord by registered mail on December 6, 2019 and the Landlord confirmed receipt of this package. Based on this undisputed evidence, as this package was served accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant advised that she served her evidence to the Landlord by registered mail on January 16, 2020 and the Landlord confirmed that she received this. The Tenant submitted digital evidence as well, but she did not check to see if the Landlord could view this evidence. The Landlord advised that she was not able to view the digital evidence. As I am satisfied that the Landlord received and could view the Tenant’s hardcopy evidence but could not view the digital evidence, I have only accepted the hardcopy evidence and will consider that when rendering this decision. The digital evidence will be excluded and will not be considered when rendering this decision.

The Landlord advised that she served her evidence to the Tenant by registered mail on January 18, 2020 but the Tenant advised that she did not receive this. However, the tracking history indicated that the package was available for pickup on January 22, 2020 but it was not picked up by the Tenant. As this evidence was available for the Tenant, I have accepted this evidence and will consider it when rendering this decision.

All parties acknowledged the evidence submitted and 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 a Monetary Order for compensation?

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.

All parties agreed that the tenancy started on October 1, 2019 and that rent was established in the amount of \$1,600.00 per month, due on the first day of each month. A security deposit of \$800.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenant advised that since the second week in October, the upstairs tenants have been disrupting the Tenant's right to quiet enjoyment with ongoing, excessive noise issues at unreasonable times of the day, including: partying, loud music, dropping of items on the floor, running, thumping, and dragging furniture. She submitted, as documentary evidence, a complaint letter to the Landlord dated October 31, 2019 of 14 separate dates where incidents occurred. All of these incidents occurred late at night or early in the morning.

She submitted another letter dated November 2, 2019 requesting that the Landlord address the noise issues as they are ongoing, and she has called the police about specific incidents. This letter noted that the neighbours have complained to city hall about the behaviour of the upstairs tenants. She also included other letters dated November 8, 2019, November 13, 2019, and November 16, 2019 advising the Landlord of the continuing and escalating issues and requesting that she address them instead of ignoring her requests. In addition, the November 16, 2019 letter indicates that the police have warned the upstairs tenants to be more respectful.

She also submitted a letter dated December 4, 2019 outlining all the noise complaints and times of these occurrences from November 2, 2019 to December 4, 2019 totalling 27 separate incidents. She included a letter dated December 6, 2019 documenting the six police file numbers of noise complaints dating back to October 11, 2019. In addition,

she submitted a letter dated January 8, 2020 documenting the five police file numbers of noise complaints dating back from December 24, 2019 to January 6, 2020. Finally, she included a complaint letter to the Landlord dated January 8, 2020 outlining all the noise issues from December 5, 2019 to January 7, 2020, totalling 19 separate incidents. She also included a letter dated December 27, 2019 with respect to a parking issue where she alleges witness A.A.'s vehicle was boxed in by the upstairs tenants and that they came down and threatened A.A. to the point that the police were required to attend. She also stated that she sent videos of these incidents to the Landlord.

Witness A.A. advised that he also lives in the rental unit and in October 2019, the upstairs tenants had a party. The Landlord was advised of this and she warned the upstairs tenants to be more respectful; however, after this warning, the upstairs tenants came downstairs to threaten him. He stated that they would call the police about the unreasonable disturbances and the upstairs tenants would threaten him by saying "If you call the police, you're dead." The police advised him to avoid the upstairs tenants. After the police would leave, the noise would start all over again. He stated that the upstairs tenants prevent them from getting their mail and would use foul language. He advised that they party everyday, make lots of noise, play music loudly, move furniture, jump, and that this would start around 9 PM most nights and often go until 4 AM. He stated that their kids cannot sleep at night and sometimes sleep at school.

The Tenant advised that they are seeking compensation in the amount of **\$4,111.25** for the loss of quiet enjoyment of the rental unit due to the unbearable and frequent noise. She stated that sleeping after 9 PM is impossible and the excessive noise happens almost every night. This has been ongoing for a number of months and the Landlord has not made any efforts to remedy the situation despite numerous requests from the Tenant.

The Landlord advised that she did not ignore the Tenant's complaints and she addressed these issues when informed. She stated that she warned the upstairs tenants to be quiet and referred to the text messages she submitted as documentary evidence demonstrating that she brought these issues up. She stated that she spoke to the police on September 12, 2019 and they told her that the level of noise was reasonable. She stated that she even went to talk to the upstairs tenants face-to-face and they ensured that they would not make any more noise. She advised that she also phoned the upstairs tenants in November and December regarding the noise issue. She referred to the Tenant's complaints of noise and stated that these incidents are only for short periods of time. Finally, she stated that she made no efforts to investigate to determine if this noise exists or what the extent of the noise being made is.

Analysis

Upon consideration of the evidence before me, 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 a Tenant is entitled to reasonable privacy and freedom from unreasonable disturbance.

Furthermore, with respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Tenant's complaints about unreasonable noise from the tenants upstairs, I find it important to note that it should be expected when sharing a space with others, that a reasonable level of noise with everyday living is normal. However, I have before me numerous complaints from the Tenant of alleged excessive noise caused by the upstairs tenants, and that this has been ongoing for a number of months. In addition, I have testimony from A.A. that supports the Tenant's evidence of an unreasonable amount of noise that has been occurring. While the Landlord has provided testimony that she has addressed these issues and that they are not as significant as alleged, when reviewing the Landlord's evidence, I find that it actually supports the Tenant's complaints of excessive noise coming from the upstairs tenants. Some examples of this are: "Did you remember We[sic] signed contract no party, no noise, no music?", "... because of[sic] you can't be quiet at 10:00, I cannot rent for[sic] you, sorry.", and "My neighbor complains too much noise cause they can't sleep... neighbor told me if you're not stop[sic] music noise, they gonna call police." Consequently, I prefer the Tenant's evidence and I am satisfied on a balance of probabilities that there was more likely than not an ongoing noise issue that was unreasonable and excessive.

With respect to the Tenant's request for an Order that the Landlord comply with the *Act*, I find it important to note that the Landlord advised that she warned the upstairs tenants of these noise complaints; however, based on the documentary evidence she provided, it appears as if she only contacted the upstairs tenants about these issues in October 2019. Moreover, as she stated that she did not investigate the nature of the Tenant's complaints, I find it more likely than not that when the Landlord received complaints from the Tenant, she simply requested that the upstairs tenants make efforts to reduce the amount of noise that they were making but did nothing else. If there is an ongoing issue, the onus is on the Landlord to determine if a tenant is breaching the *Act*, and if the breaches continue after written warning, then the Landlord should take the appropriate action to deal with the issues and potentially end the tenancy of the problematic tenant. By not taking corrective action and simply advising the Tenant that they could move, I am not satisfied that this was sufficient in managing this issue. As a result, I Order that the Landlord take corrective action immediately to investigate the

situation and provide a remedy to the differences that are occurring between the rental units.

Furthermore, as I am satisfied that there has been a breach of the *Act* and that the Tenant has suffered from a loss of quiet enjoyment, I am satisfied that the Tenant should be compensated accordingly. However, based on the Tenant's evidence, I am not satisfied that this loss is equivalent to the amount that she has claimed for. When reviewing the totality of the evidence before me, I find that the Tenant has substantiated a claim of loss in the amount of \$500.00 per month for the months of October, November, and December 2019. As such, I find that the Tenant should be granted a monetary award in the amount of **\$1,500.00** for her loss.

Conclusion

The Landlord is Ordered to take corrective action immediately to investigate the nature of the Tenant's claims for loss of quiet enjoyment and to provide an effective remedy to this situation. In addition, I grant the Tenant a Monetary Order in the amount of **\$1,500.00**, and the Tenant is permitted to withhold this amount from a future month's rent.

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: February 11, 2020

Residential Tenancy Branch