Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, RR, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("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;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's agent, the landlord's lawyer, the tenant, and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord intended to call a witness at this hearing but did not recall this witness, after she was excluded from the outset of the hearing.

The landlord confirmed that she was a co-owner of the rental unit and that her agent, who is also a co-owner and her husband, had permission to speak on her behalf. The landlord confirmed that her lawyer had permission to speak on her behalf. The tenant confirmed that his agent, who is his wife and a co-tenant, had permission to speak on his behalf.

The hearing began at 9:30 a.m. with all parties present. I connected to the teleconference system at 9:36 a.m., as there were issues with connecting, due to the telephone service provider. The hearing ended at approximately 10:42 a.m.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

Both parties confirmed that they were ready to proceed with this hearing and they had no objections to the other party's evidence.

Preliminary Issue – Previous RTB Hearing

At the outset of the hearing, both parties agreed that a different Arbitrator at a previous RTB hearing on December 23, 2019, dealt with the tenant's application for monetary compensation, an order to comply, and a rent reduction. The Arbitrator issued a decision, dated December 24, 2019, dismissing the tenant's claim for a rent reduction with leave to reapply, in the event there were future issues. The tenant was awarded $2,100.00 in nominal damages plus the $100.00 filing fee, with the remainder of the application being dismissed without leave to reapply, after the tenant applied for $20,737.50 in compensation. The file number for the previous hearing appears on the front page of this decision.

I notified both parties that the tenant's claims for monetary compensation, an order to comply, and a rent reduction were *res judicata*, meaning it had already been decided and that I could not deal with those claims prior to December 23, 2019, the date of the last hearing. I notified them that I could only deal with new issues arising as of December 24, 2019, onwards. Both parties confirmed their understanding of same.

Issues to be Decided

Is the tenant entitled to a monetary award for compensation for damage or loss 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 an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2017. Both parties signed a written tenancy agreement. Monthly rent in the amount of $1,975.00 is payable on the first day of each month. A security deposit of $987.50 and a pet damage deposit of $987.50 were paid and the landlord continues to retain both deposits. The tenant continues to reside in the rental unit with his wife, the co-tenant.

The tenant's application states that he seeks a monetary order of $19,750.00, a rent reduction of $790.00 per month, orders requiring the landlord to comply, and the $100.00 application filing fee.

The tenant seeks orders for the landlord to comply with safety and quiet enjoyment under section 28 of the *Act*. He said that the tenants who live above him at the same rental property ("occupants") have children who hit the tenant's child in the face with a shovel. He said that his children cannot play outside in the backyard because of safety concerns. He said that his children have not used the yard since the previous RTB hearing because of the winter cold. He claimed that the occupants put a trampoline in the shared backyard, without permission, and it is still there, so it is an ongoing issue.

The landlord disputes the tenant's request for orders to comply. The landlord's lawyer said that the trampoline and shovel issues were specifically addressed at page 6 of the previous RTB decision and dismissed, so they were *res judicata*. He claimed that the tenant acknowledged that there were no current issues, since the backyard was not used in the winter since the previous RTB decision. He explained that the landlord asked the occupants to remove the trampoline but the RTB advised her that she cannot ask for that.

The tenant seeks a rent reduction for an ongoing loss of quiet enjoyment. The tenant did not provide details on the amount or a breakdown. The tenant said that he provided 86 videos and there were "twenty or so" ongoing bylaw violations. He referred to his post-decision timeline and confirmed that the occupant's noise violations were "detrimental" to his health, as noted in his medical documents.

The tenant seeks monetary compensation but did not provide details on the amount or the breakdown. He said that his loss of quiet enjoyment at the rental unit is real and ongoing. He complained that the occupants use laundry past 8:00 p.m., stating that he mistakenly referenced that 10 p.m. would be more a reasonable quiet hours time, than 11:00 p.m. which was raised in a conversation with the landlord, but this was an error and he should have said 8:00 p.m., as per the municipal bylaw. He referenced his medical documents, saying the occupants' behaviour was "detrimental" to his health, it causes more anxiety with his stress disorder, it raises his blood pressure, and he has a risk of a heart attack. He maintained that the occupants' children jumping off furniture and rattling light fixtures was loud and disrespectful, and his children cannot play in the yard due to safety issues. He claimed that he was desperate for change and the only thing that will make the landlord "notice" is a monetary request.

The landlord disputes the tenant's rent reduction and monetary claim. The landlord's lawyer stated that there is a two part test under the Residential Tenancy Policy Guideline for a loss of quiet enjoyment: 1) whether there is more than a temporary discomfort, as per common law this would be "grave" and "permanent" and; 2) the landlord is only responsible if the landlord is aware and has failed to take reasonable steps to correct it. He confirmed that the landlord issued a letter, at page 171 of the landlord's evidence, to the occupants informing them of the previous RTB decision and obligations, indicating that a formal notice to end tenancy for cause could be issued if they did not respect the tenant's right to quiet enjoyment. The tenant agreed that this letter was sent by the landlord but argued that the problems are still persistent, as per the videos he submitted. The landlord's lawyer claimed that the landlord instituted quiet hours between 10:00 p.m. and 7:00 a.m. at the rental property, which was agreed to by the occupants and the tenant, but the tenant later retracted. He said that the tenant complains that toilet flushing past 8:00 p.m. is harassment and considers all walking upstairs to be stomping.

The landlord's lawyer pointed to evidence from pages 52 to 180 of the landlord's evidence, of conversations between the tenant, the landlord, and the occupants in early January 2020, regarding the landlord's offers to call the RTB for solutions with the tenant, the landlord's efforts to talk to the occupants and be proactive, the landlord's efforts to advise the occupants of the noise complaints from the tenant, the quiet hours initially agreed to by the tenant and then retracted by him, the landlord's review of the tenant's videos as "regular background noise," letters sent to the occupants regarding the noise, and the fact that quiet enjoyment does not include no noise at all. He maintained that the municipal bylaws do not apply in a single household. He explained that the letter from the occupants to the landlord at page 217 of the landlord's evidence

states that the occupants can hear the tenant's conversations, appliances running, and early morning noise, while upstairs at the rental property.

Analysis

Legislation

Section 28 of the *Act* deals with the right to quiet enjoyment (my emphasis added):

> *28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
>
> *(b) freedom from **unreasonable disturbance**;*
>
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
>
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Residential Tenancy Policy Guideline 6 "Entitlement to Quiet Enjoyment" states the following, in part (my emphasis added):

> *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.*

Orders to Comply

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for the landlord to comply with the *Act, Regulation* or tenancy agreement, without leave to reapply.

I find that the tenant's complaints about safety in the backyard, where he alleged "my child has been hit in the face with a shovel" by the occupant's children, was specifically quoted at page 6 of the previous RTB decision and dismissed. The tenant's complaint about the occupants putting a trampoline in the backyard without permission was also specifically addressed at page 6 of the previous RTB decision and dismissed. These issues are *res judicata*, as the tenant failed to identify any new issues after December 24, 2019, stating that no one has used the backyard in the winter, since the last hearing.

Rent Reduction

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for a rent reduction of $790.00 per month, without leave to reapply. The tenant was unable to provide a breakdown or justify the amount being claimed. The tenant did not even reference the above number during the hearing. The above number was taken from the description in the tenant's application, when it was filed.

I find that the landlord did not fail to provide repairs, services or facilities to the tenant. I find that the landlord dealt with the issue of quiet enjoyment, as noted in the section below. I find that the tenant's complaints about safety in the backyard were addressed and dismissed at the previous hearing, and are now *res judicata*, as the tenant failed to identify any new issues after December 24, 2019.

Monetary Compensation

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for compensation of $19,750.00, without leave to reapply.

While the tenants found the occupants to be loud and noisy, these complaints were not necessarily subject to intervention by the landlord. Residing in a multi-unit building sometimes leads to disputes between tenants. A certain level of noise is to be expected, given the location of the tenant's unit directly below the occupants' unit. The occupants living above the tenants are entitled to quiet enjoyment of their unit, including completing activities of daily living and using the unit for different purposes. The tenant cannot decide how or when the occupants' unit is to be used and for what purposes. The rights of both parties must be balanced.

When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required.

I find that the landlord described an appropriate process that was initiated to address the tenant's complaints regarding the occupants' noise. The landlord notified the occupants of the previous RTB decision, the requirement to respect the tenant's quiet enjoyment and minimize noise issues and cautioned a potential future eviction for cause. The landlord established quiet hours between 10:00 p.m. and 7:00 a.m., which the tenant initially said he agreed to in error. I find that these are reasonable quiet hours and I find that the tenant failed to show that the occupants violated these quiet hours. I see insufficient evidence to demonstrate that the landlord failed to take appropriate action to follow up on the tenant's noise complaints about the occupants living above him.

I find that the tenant did not provide sufficient evidence to substantiate his monetary claim for $19,750.00 and failed to satisfy the above four-part test. The tenant did not even reference this number during the hearing or provide a breakdown. He repeatedly stated that I should "go through the videos, they speak for themselves." Yet, the tenant referenced 86 videos but did not indicate which videos showed what content and what content he was specifically referring to. The landlord's lawyer stated that the tenant should point to specific portions of the videos, so that he could respond to it, but the

tenant still failed to go through his videos during the hearing. The tenant referenced a "post-decision timeline" and his medical records during the hearing but did not go through them, point to any specific portions, indicate any specific dates, or make any specific submissions about them.

I find that the noise referenced by the tenant is a temporary inconvenience and not an unreasonable disturbance, as noted in Policy Guideline 6, above. The tenant referenced a violation of noise bylaws but did not indicate, during the hearing, which bylaw, provide details of its application to the specific rental unit, or attempts to contact bylaw officers for enforcement. He complained that the occupants did laundry at 8:00 p.m. which violated the municipal bylaw. The landlord's lawyer argued that the municipal bylaw did not apply to a single household; the tenant did not respond to or dispute this fact. The tenant did not indicate specific dates, since December 24, 2019, when these noise violations occurred, despite me asking for same. The tenant did not indicate during the hearing that he contacted the police or City bylaw officers to file noise complaints after December 24, 2019.

As the tenant was unsuccessful in this application, I find that he is not entitled to recover the $100.00 filing fee from the landlord.

Conclusion

The tenant's entire application is dismissed 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: March 24, 2020

Residential Tenancy Branch