



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDCT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord confirmed that he had received the tenant's documentary evidence for this hearing. The landlord did not submit any documentation for this hearing.

Issue(s) to be Decided

Is the tenant entitled to an order compelling the landlord to comply with the *Act*, regulation or tenancy agreement?

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

Background and Evidence

The tenant gave the following testimony. The tenant moved in on February 1, 2010. The current monthly rent of \$840.00 is due on the first of each month. The tenant testified that for the past eight years he has endured unreasonable and consistent noise coming from the tenants above. For the first five years it was a female tenant that caused the noise. The current tenants that live above the subject unit moved in about three years

ago. The tenant testified that the upper tenants stomp around the home on a regular basis late at night and go to the bathroom in the early morning hours. The tenant testified that the tenants above him have a cat that also disturbs him at all hours of the night. The tenant testified that the maintenance of the building is lacking as well. The tenant testified that he is the only one that brings any deficiencies to the landlords' attention. The tenant testified that he wants the noise to stop, for the landlord to properly maintain and secure the building and seeks \$480.00 as compensation.

The landlord gave the following testimony. RH testified that he is willing to work with the tenant and will advise him of a top floor unit when one becomes available to hopefully address the tenants concern. RH testified that these complaints just came to his attention as he has just taken over managing this property. MH testified that the noise described by the tenant is reasonable noise and is to be expected in a wood frame building. MH testified that the noise is very brief and not as often as alleged. LG testified that he and his girlfriend do not purposely make noise to bother the tenant. LG testified that they are simply moving around their unit and are reasonable in the amount of noise being made. LG testified that there is never any malice or intent in their actions towards the tenant.

Analysis

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

Monetary Order of \$480.00

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant testified that he was seeking a monetary order because it was suggested to him by a stranger when he was waiting at the Branch to file his application. The tenant has failed to provide sufficient evidence as to how he came to the calculation as alleged and how that is the appropriate amount in accordance with section 67, accordingly; I dismiss this portion of his application.

Order for the Landlord to Comply with the Act, regulation or tenancy agreement.

The tenant testified that he had numerous letters of complaint that he submitted to the landlord asking for the landlord to properly maintain the property and about noise complaints, however, the tenant did not submit them for this hearing. In addition, the landlord, manager and witness provided disputing testimony that the alleged noise is nothing more than people going about their daily routines and that there is nothing unreasonable about their actions. I find that the tenant has not provided sufficient evidence to satisfy me that an order is required, accordingly; I dismiss this portion of the tenant's application.

Conclusion

The tenants application is dismissed in its entirety 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: April 07, 2020

Residential Tenancy Branch