



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT OLC FFT

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for March 23, 2020. The hearing was adjourned due to lack of time to complete the previously scheduled hearing.

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

- a monetary order for compensation for loss or money owed under the *Act*, 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; and
- authorization to recover the filing fee for this application, pursuant to section 72 of the *Act*.

KG and NH appeared as agents for the landlord in this hearing. The tenant attended with his agent SG. 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.

Issues(s) to be Decided

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

Is the tenant entitled to an order for the landlord to comply with the *Act*?

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

Background and Evidence

This hearing took place over two separate days, with additional hearing time allotted totalling 3 hours and 26 minutes, in order to provide a fair opportunity for all parties to give sworn testimony, call witnesses, and cross examine each other. While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on October 1, 2019, with monthly rent currently set at \$795.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$397.50, which the landlord still holds.

The tenant's application is for monetary compensation as well as aggravated damages related to the tenant's loss of quiet enjoyment and landlord's failure to comply with the *Act*. The tenant amended his initial claim of \$830.62 to add an additional monetary claim of \$2,421.72 for a total monetary claim of \$3,260.34. As the matter has been ongoing, the tenant requested that an additional monetary claim of 100% of the monthly rent be considered for March 2020 through to May 2020. The tenant's monetary claim also includes a claim of \$36.72, which the tenant incurred for the purchase of ear plugs and ear muffs.

The tenant is also requesting an order for the property manager and landlord to take immediate steps to ensure the tenant's quiet enjoyment and an abatement of any unreasonable and deliberate behaviour by other tenants and occupants meant to interfere with the tenant's quiet enjoyment.

The tenant resides in a multi-dwelling building containing 3 rental suites. The tenant resides in the lower back unit. There is one unit in front, and one upper unit. The tenant testified that he suffers from a medical condition involving his inner ear, which renders him sensitive to loud and sudden noises. The tenant testified that he made specific inquiries about the noise level and other occupants as this is important in managing the medical condition. The tenant attended two viewings of the rental suite, and signed a fixed-term tenancy agreement on September 28, 2019 for a tenancy beginning October 1, 2019.

Shortly after moving in, the tenant testified that he was disturbed by loud noises from the upstairs tenants, which exceeded normal every day household noise levels. The

tenant testified that he was informed that there were only 3 quiet, adult tenants residing upstairs. The tenant testified that he discovered that there was also a teenage female occupant, who is often accompanied by her boyfriend and friends, as well as a young child who was cared for in a daycare setting for 8 hours a day, 5 days a week, from the early hours of 6:00-6:30 a.m. for an average of 8 hours a day, and sometimes overnight. The tenant testified that the adult, disabled son would also contribute to the loud noises by smoking on the balcony, which involved the opening and closing of the balcony door.

The tenant informed the landlord early in the tenancy of the issues, and the tenant received a response that the landlord would speak to the tenants. The tenant testified that the disturbance has escalated to the extent that he has taken medication and purchased ear plugs and noise reduction aids. The tenant provided over 120 log entries for the period of October 17, 2019 to January 12, 2020 in his evidentiary materials which detail the disruptions to his sleep and quiet enjoyment. The tenant testified despite the sound proofing in the home, the level of noise has been excessive, which includes the opening and closing of patio door in a hard manner at all hours, heavy walking, sounds of a child running and jumping, and other disturbances.

The tenant testified that a dispute arose over the use of the laundry facilities, and the noise escalated after his complaint, which included forceful stomping, heavy pacing, and deliberate actions to disturb him. In addition to his logs, the tenant also provided audio recordings, which the tenant submits the landlord has failed to acknowledge. The tenant testified that the landlords has failed to address the issues directly with the tenants, and have instead issued a generic warning. The tenant testified that the landlord informed him that he would have to wait for a decision of an Arbitrator instead of addressing his concerns.

The tenant testified that instead of issuing the tenants a Notice to End Tenancy for Cause, the landlord had issued the tenant a warning that he would be the party receiving a Notice to End Tenancy. The tenant was given an option to end the fixed-term tenancy and move, but the tenant testified that this would cause extreme hardship on him to find new housing. The tenant also feels that the landlord has not been impartial, and instead of dealing with the matter, that this was a stalling and avoidance tactic by the landlord to investigate and deal with the matter.

The tenant is concerned that any future complaints would result in continuing and escalating harassment towards him. In addition to the monetary orders requested, the tenant is requesting that the landlord be ordered to address his concerns, which also include revisiting his original request for the installation of carpet and underlay. The

tenants feel that despite the landlord's testimony that they have addressed the issues brought up, the tenant feels that the landlord does not have the qualifications to conclude that the noises are within the normal scope of living.

The landlord's agents testified that they have taken all the necessary steps possible to mediate the issues brought up by the tenant. The landlord feels that they have investigated and dealt with the matter, and that no further action would assist the tenant in providing him with a satisfactory resolution of the matter. The landlord feels that even in the circumstance where they would be successful in ending the tenancy with the upper tenants, the tenant would still be residing in a multi-dwelling rental complex where there will be noises that may be within the normal scope of living, but would exceed the tenant's tolerance due to his medical condition. The landlord testified that they had listened to the tenant's recordings, and feel that the recordings do not disclose any evidence of disturbance that could be considered unreasonable or deliberate.

The landlord is also opposed to the tenant's requests for orders, including the tenant's request that the tenants not use the walkway near the tenant's home, which the landlord stated was common space, and was necessary for the other tenants' use as the alternative includes a large step up retaining wall prevents easy and accessible access.

The landlord feels that they have mitigated the matter by offering the tenant the ability to move out without any penalty despite the fixed-term agreement. The landlord testified that they had never intentionally misled the tenant before the agreement was signed, and that they had never received any complaints from previous tenants about the other tenants or noise.

The landlord also provided photographic evidence of the steps taken by the tenants in mitigating the noise such as purchasing WD-50 and felt pads for the furniture and doors, moving the television, and an inspection which took place on February 26, 2020. The landlord testified that the staff was confronted by the tenant during the inspection, and did not feel comfortable. The tenant testified that the landlord failed to disclose that another party would be attending, and that he did not give permission for photos to be taken.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss.*

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I have considered the testimony and evidentiary materials submitted by both parties. I accept the evidence of the tenant that he has suffered much distress during this

tenancy. The onus is on the tenant, however, to support how the actions of the landlord constitute a contravention of the *Act*, and furthermore, how this contravention has caused the tenant to suffered a loss in the amounts claimed.

The tenant provided detailed evidence documenting how he has been disturbed by the actions of the other tenants in this multi-dwelling home. The landlord disputes these claims, stating that the noises heard by the tenant fall within the normal scope of living, and that the tenants have been cooperative in mitigating the noise complaints by the tenant. Although the tenant feels that the tenants have not been given sufficient warnings about the noise and the tenant's complaints, I find that the landlord had provided sufficient evidence to support steps taken by the tenants in reducing the noise from their rental unit. Furthermore, although the tenant questioned the landlord's qualification in assessing the level of disturbance and noise as recorded on the audio recordings, I find that listening to the audio recordings myself that the evidence does not support the existence of any excessive or unusual disturbance. Regardless, the burden of proof is on the tenant, and not the landlord to support this claim, and I find that the tenant's evidence fails in this regard.

Although I accept that the landlord has a duty to address complaints from tenants, the landlord has a duty to balance their obligations to all their tenants. Although the tenant testified that the other tenants have escalated their behaviour in an aggressive and harassing manner after he had made his complaints, I find that the tenant's beliefs are not sufficiently supported in evidence.

As this is a multi-tenanted building, with multiple occupants, I find that the level of quiet enjoyment is impacted by the nature of the living space and construction of the home. I find that the tenant's medical condition exacerbates his ability to tolerate what could be considered normal or reasonable levels of noise. Although I am sympathetic towards the tenant's situation, and the fact that he inquired about the level of noise before signing the tenancy agreement, I find that the evidence does not support that the landlord had intentionally misled the tenant, or that the noise experienced by the tenant exceed normal or reasonable levels. I accept the landlord's testimony and concerns that that any future tenants could pose a problem for the tenant as even unintentional noise could be considered problematic by the tenant.

I find the landlord fulfilled their obligations as required by the *Act*. Accordingly, I dismiss the tenant's entire application for monetary compensation without leave to reapply.

The tenant requested orders for the landlord to deal with the tenant's concerns about his quiet enjoyment. The tenant is concerned about being subjected to the ongoing

issues brought up in this dispute, and the landlord's failure to deal with them. As stated, I am not satisfied that the landlord has failed to fulfil their obligations in relation to the tenant's right to quiet enjoyment. As stated earlier, the landlord has an obligation to balance their obligations to all tenants, and I am not satisfied that the tenant has provided sufficient evidence to support that the landlord has failed to be impartial in dealing with this matter. I find that the landlord has sufficiently addressed the tenant's concerns during this tenancy to the extent of their obligations under the *Act* and tenancy agreement. I am not satisfied that the orders requested by the tenant are necessary or justified. For this reason, I dismiss the tenant's application for the orders requested without leave to reapply.

As the tenant was not successful with his application, the tenant's application for recovery of the filing fee is dismissed without leave to reapply.

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: May 19, 2020

Residential Tenancy Branch