



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, LRE, OLC, MNDCT

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution by the Tenant filed under the Residential Tenancy Act (the “Act”) for a monetary order for compensation for monetary loss or other money owed, for an order for the Landlord to comply with the Act, regulation and/or the tenancy agreement, for an order to suspend or set conditions on the Landlord's right to enter the rental unit or site, and for an order to reduce rent for repairs, services or facilities agreed upon but not provided. The matter was set for a conference call.

The Tenant, the Tenant's Advocate (the “Tenant”), and three Agents for the Landlord (the “Landlord”) attended the conference call hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Tenant and the Landlord confirmed that they had received each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter – Application Amended

During the hearing, the Tenant clarified their claim, stating that they are not seeking a rent reduction or for an order for the Landlord to comply with the Act, regulation and/or the tenancy agreement and that they are removing these items from their claim.

Section 4.2 of the Residential Tenancy Branch rules of procedure states the following regarding application amendment during the hearing:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I find it reasonable and appropriate to amend the Tenant's application during this hearing; removing the Tenant's request for a rent reduction is removed, and for an order for the Landlord to comply with the Act, regulation and/or the tenancy agreement from these proceedings.

Issues to be Decided

- Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit or site?
- Is the Tenant entitled to monetary compensation for monetary loss or other money owed?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here.

The agreed-upon testimony of these parties is that this tenancy began on October 1, 2018. A copy of the Tenancy Agreement was submitted into documentary evidence by both the Tenant and the Landlord.

The Tenant testified that the Landlord Agent has been accessing their rental unit without notice, stating that they do not wish to change the locks but that they do want to have an order that this particular agent, K.B., is prevented from attending their unit for any reason. The Tenant testified that on February 23, 2020, while they were home, the Landlord's Agent K.B entered their rental unit without notice or knocking. The Tenant also testified that K.B. has been harassing them, that they know K.B. has been going

into their unit when they are out and moving their things, and that on April 1, 2020, K.B. took a phone video of them without the Tenant's permission.

The Landlord testified that they always give written notice before entering any rental unit or they knock and ask to be invited in. The Landlord stated that going forward; they will always give a written Notice before entering this Tenant's rental unit and confirmed they would never knock and ask to be invited in going forward.

The Landlord Agent K.B. testified that the events of February 23, 2020, the Tenant testified to, had not happen, that they never entered the Tenants rental unit without Notice or an invite to enter. K.B. also testified that they were on vacation the week of February 23, 2020 and that they were not in the building on that day. K.B. testified that they are not harassing the Tenant and that they have not entered the rental unit when the Tenant is away.

The Tenant testified that they had suffered a loss of quiet enjoyment due to excessive noise coming from the neighbouring rental unit. The Tenant testified that the neighbour, the neighbour's care aide and the neighbour's family excessively stomp around the rental unit, banging doors and that the mechanical movement of the neighbour's medical bed is excessively loud and very disturbing to the Tenant. The Tenant submitted six recordings into documentary evidence to support their claim.

The Landlord testified that they had received the Tenant's noise complaints, investigated them and found that there was no excessing notice coming for the Tenant's neighbour. The Landlord argued that the notice heard on the Tenant's recorded evidence was coming from the Tenant unit, not the neighbours.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the Tenant is requesting that the Landlord's Agent, K.B., be prevented from attending their rental unit. Claiming that K.B., had entered the rental unit without giving the required notice to enter and that they were issuing their position to harass the Tenant. Section 29 of the Act states the following:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

In order for a Tenant to be successful in a claim to restrict their Landlord's access rights to the rental unit, a tenant must prove that the landlord or their agent has breached the Act. During these proceedings the parties offered conflicting verbal testimony regarding the K.B.'s access to the Tenant's rental unit and the nature of their interactions with the Tenant. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim; in this case, that would be the Tenant as the applicant to these proceedings.

After reviewing the totality of the evidence submitted by the Tenant, I find that there is no documentary or digital evidence before me to support the Tenant's claims regarding the Landlord's Agent K.B. In the absence of supporting evidence, I must dismiss the Tenant's claim to restrict the Landlord's access to the rental unit.

The Tenant is also claiming for compensation in the amount of \$6,900.00 due to loss of quiet enjoyment. Awards for compensation due to damage or losses are provided under sections 7 and 67 of the Act. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides

guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In order to determine if the Tenant is entitled to compensation, I must first determine if there had been a breach of the *Act* by the Landlord. The Tenant has claimed that they have made numerous complaints regarding the level of noise they are experiencing coming from their neighbor’s rental unit and that the Landlord has refused to resolve the problem. Section 28 states the following:

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:

- (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.*

Again, during these proceedings the parties offered conflicting verbal testimony regarding the noise levels in the Tenant’s rental unit. As stated above, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed the six recordings submitted into documentary evidence by the Tenant, all six of these recordings visually depict a white surface, while banging and walking noises can be heard. However, I find that I am in agreement with the Landlord, that from the video and audio provided, it is unclear if the sounds heard are coming from inside of the Tenant's rental unit or another unit.

Additionally, after viewing these recordings, I find that on a balance of probabilities, the noises heard in these recordings are of everyday life, and not to be excessive or unusual.

Overall, I find that the Tenant has not submitted sufficient evidence to out weight the conflicting verbal testimony that I heard during these proceedings. Therefore, I find that I must dismiss the Tenant's claim for compensation due to loss of quiet enjoyment in its entirety.

Conclusion

The Tenant's application is dismissed in its entirety.

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: December 16, 2020

Residential Tenancy Branch