



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT

Introduction

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

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

The tenant participated in the teleconference, the landlord did not. The tenant testified that he served the landlord the Notice of Hearing Documents and Application in person on October 30, 2020. The landlord submitted some documentary evidence to the tenant and the Branch in reply to this application. I am satisfied that the landlord was served in accordance with section 89 of the *Act* and the hearing proceeded and completed on that basis.

Issue(s) to be Decided

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

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

Background and Evidence

The tenant gave the following testimony. The tenant moved into the unit in March 2013 and has a monthly rent of \$328.00. The tenant testified that he has made this application as a result of the tenant that used to reside below him. The tenant testified that from January 2020 to September 2020 the downstairs tenant played music so loud

and so often that it caused the tenant to be hospitalized on three separate occasions. The tenant testified that the loud music triggered his anxiety and stress condition to the point he was unable to sleep and felt as if the music was drilling into his head. The tenant testified that the landlord did nothing when he told him about the situation.

Analysis

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 is seeking a monetary order of \$10,360.00 for medical costs. The tenant's application fails for the following reasons. The tenant only notified the landlord in writing on September 4, 2020 despite his allegations that the problem arose in January 2020. The downstairs tenant died about ten days after the landlord was advised of the situation. In addition, the tenant has not incurred any "out of pocket costs".

The costs he alleges for medical care and prescriptions was covered by Provincial Medical Plan at no cost to him. In addition, the tenant only submits estimated amounts. As noted above, the tenant must satisfy all four of the elements to be granted a monetary order, I find that the tenant has not provided sufficient evidence of what the actual amount of loss was or sufficient evidence of mitigation, accordingly; I dismiss the tenants application in its entirety without leave to reapply.

Conclusion

The tenant's 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: January 18, 2021

Residential Tenancy Branch