



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Glassman Holdings Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), for a monetary order for monetary loss or other money owed.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary compensation rent?

Background and Evidence

The parties agreed that the tenancy began on January 1, 2019. Rent in the amount of \$1,154.00 was payable on the first of each month. The tenant paid a security deposit of \$562.50. The tenancy ended on August 30, 2020.

The tenant testified that for the last three months of their tenancy that the landlord breached the tenancy agreement by failing to protect their rights to quiet enjoyment by

dealing with the occupant that resides next to their rental unit as they were screaming many times during the night and early morning.

The tenant testified that on June 18, 2020 at 4:59 am the occupant next door was screaming, and they notified the building manager of that incident by text message. Filed in evidence is a video of the noise heard by the tenant and a text message to the building manager.

The tenant testified that on July 17, 18, 21, 29, 30, 2020, again the occupant next door was screaming. Filed in evidence are videos of what the tenant heard and text messages to the building manager.

The tenant testified that on July 21, 2020, they sent the landlord a letter informing them of that they are in violation of the tenancy. Filed in evidence is a copy of that letter.

The landlord's agent testified that the building manager did respond to the tenant's concern for the June 18, 2020, complaint. The landlord testified that the building manager was away on holidays from July 16 to the 26th and the tenants were given an alternate number to contact for the relief manager and also their own number and email address as there were postings throughout the building.

The landlord testified that the tenant never used these numbers to notify them of any problems between July 17 to 22, 2020. The landlord's agent stated that they received the tenant's letter of July 21, 2020, and they responded both by email and by letter.

The landlord's agent testified that they also issue the other occupant a warning letter; however, at this time they found out that the other occupant had mental health issues and stop taking their medication. The landlord stated the occupant has been a long time tenant for over 10 years and these were the first complaints that they had received. The landlord stated that the occupant has gone back onto their medications and have help from an outreach organization and there have been no other complaints received.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard,

that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

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.

In this case, I am not satisfied that the tenant has met the burden of proof of any unreasonable disturbance. I have watched and listen to all the videos submitted by the tenant as evidence. The videos do not support any loud screaming. Further, these video recording were not made of the noise heard in the tenant's rental unit. They were taken by the tenant placing their phone at the door of the occupant's residence.

While I do accept, I can hear sounds, such as childlike singing, babbling, and muttering they were not loud, and they certainly were not screaming. I also find that is unreasonable for the tenant to be making video recording at the door of the occupant's rental unit, that is violation of the occupant's rights of reasonable privacy.

Further, I had asked the tenant at the hearing why they would not record the noise from their own rental unit if the noise was unreasonable. The tenants responded that the noise they heard was unrecordable and that is why they went and recorded the noise from the occupant's doorway. If the noise was not recordable in their own unit and the noise heard in the videos is not unreasonable, I find I cannot find that the tenant has been unreasonably disturbed. Therefore, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's 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: February 27, 2021

Residential Tenancy Branch