



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURION PROPERTY ASSOCIATES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, OLC, MNDCT, FFT

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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted 123 documentary evidence files via Canada Post Registered Mail in two packages on December 2, 2020 and January 19, 2021. Both parties confirmed the landlord served the tenant with the submitted 2 documentary evidence files via Canada Post Registered Mail on January 30, 2021. The tenant stated that he did not have any issues responding to the landlord's evidence since it was delivered 1 day before the hearing. Neither party raised any other service issues.

I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

The hearing was adjourned after 63 minutes past the start of the scheduled hearing time due to extensive discussions and insufficient time. Both parties were advised of the adjournment process and that a notice of adjournment would be sent to the

confirmed email addresses of both parties for receipt (counsel for the landlord). Both parties were cautioned that no new evidence was to be submitted nor would it be accepted. Both parties provided future hearing conflict dates and asked that the Residential Tenancy Branch accommodate them. Both parties were cautioned that while an attempt would be made to accommodate these dates, this is not guaranteed.

During the hearing the tenant confirmed that he had vacated the rental unit on December 31, 2020 and as such, the request for the landlord to comply with the Act was withdrawn by the tenant. As such, no further action is required for this portion of the tenant's application.

On April 19, 2021 the hearing resumed with both parties present. Due to a lack of time the hearing was adjourned after 94 minutes. Discussions took place in which the tenant stated that the landlord had submitted fraudulent evidence in the form of log notes kept by the landlord's agent. Extensive discussion over a 30 minute period resulted in the tenant's clarifying that he did not agree with the notes of the landlord's agent. No proof of fraud was provided. The tenant confirmed that he did not have any proof of fraud but did confirm that he disagreed with submitting a noise complaint on September 11, 2020.

The hearing was adjourned due to extensive discussions and insufficient time, both parties were reminded of the adjournment process and that a notice of adjournment would be sent to the confirmed email addresses of both parties for receipt (counsel for the landlord). Both parties were again cautioned that no new evidence was to be submitted nor would it be accepted. Both parties provided future hearing conflict dates and asked that the Residential Tenancy Branch accommodate them. Both parties were cautioned that while an attempt would be made to accommodate these dates, this is not guaranteed.

The hearing reconvened on May 21, 2021 with both parties present.

The tenant's application was clarified in that the tenancy had ended on December 31, 2020 and as a result the tenant's request for a reduction in rent for repairs, services or facilities agreed upon but not provided was no longer an issue. The tenant clarified and confirmed that he actually seeks compensation for the loss of quiet enjoyment and recovery of the filing fee.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation and recovery of the filing fee?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 2, 2020 on a fixed term tenancy ending on August 31, 2021 and then thereafter on a month-to-month basis or another fixed term as per the submitted copy of the signed tenancy agreement dated August 17, 2020. The monthly rent was \$1,750.00 payable on the 1st day of each month. A security deposit of \$499.00 and a pet damage deposit of \$300.00 were paid on August 14, 2020.

A mutual agreement to end the tenancy dated November 28, 2020 was entered into by both parties to end the tenancy on December 31, 2020.

The tenant seeks a monetary claim of \$9,928.48 which consists of:

\$1,680.00	Move-in incentive, 1 year of free internet and cable \$140/month X 12
\$8,148.18	Compensation,
	\$7,687.23 Loss of Reasonable Quiet Enjoyment
	\$816.67, 100% Rent Reduction, Oct 16-29
	\$758.33, 50% Rent Reduction, Nov 6- Nov18
	\$2,467.21, 100% Rent Reduction, Nov 18-Dec31
	\$1,750.00, Loss of quiet enjoyment, threats
	\$1,852.35, Moving Expenses
	\$42.67, Cost of Registered Mail
\$461.25	Loss of Income due to loss of quiet enjoyment

The tenant seeks \$1,680.00 as the landlord provided false advertising promising 1 year of free internet and cable if a new tenancy was entered into with the landlord. The tenant stated that the landlord failed to provide a move-in incentive of 1 year of free internet and cable. The tenant referred to the documentary evidence submission, "Evidence_Failure_to_Provide_Promised_Move-in_Incentive" which is a copy of an advertisement on the landlord's rental home page which states in part, "Free Telus TV

and internet for one year when you sign your lease within 24 hours. Select suites only. Call for more details.” The tenant stated that the landlord’s agent was contacted via email to receive the incentive and was told it was applicable to the chosen rental suite. The tenant stated that upon receiving a tenancy agreement from the landlord, the tenant noticed that the incentive was not listed. The tenant stated that the landlord was contacted via email on August 12, 2020 at 8:47am and requested clarification. It states in part,

4) I believe we were to receive free internet and cable for a year but I don’t see this indicated on the contract.

[reproduced as written]

The tenant stated that a subsequent email was sent on August 13, 2020 at 3:21am when no immediate response was given by the landlord. In that email the tenant wrote,

I was sent a lease contract by William one day ago. I replied yesterday morning to his email but haven’t yet received a response. Due to the time-sensitive nature of this, I thought I’d send it to this email as well. Our primary leasing agent has been Mike, if that helps. My previous email is below.

[reproduced as written]

The previous email was attached to this email sent. Both parties confirmed that the landlord responded in an email dated August 13, 2020 at 11:18am. The submitted copy of the email shows a highlighted portion written in red which states,

This is offered through Telus, you can redeem it at anytime. Further instructions for that deal will be sent to you in an info package from our resident managers.

[reproduced as written]

The landlord argued that this is a “third party offer” and was not part of the lease. The landlord emphasized the email response dated August 13, 2020 as noted above. The landlord also noted and referenced evidence submission,

“Landlords_Evidence_Package” marked as page “03” which displays a “TRIO” and “TELUS” advertisement. The landlord argued that this is a promotional incentive offered by Telus in conjunction with “TRIO” the developer for new occupants of the newly developed property. The landlord stated that all new occupants receive this offer as part of an introduction package. It states in part,

Our house-warming give to you. Enjoy 1 year of TELUS home services at \$0 when you sign up for 2 years.

It further states,
\$0/mo for the first 12 months. Regular prices apply thereafter.

The landlord emphasized,

Offer only available through our New Home Dedicated Centre...

The landlord also stated that at the bottom of the advert it states,

In partnership with: TRIO and TELUS.

The tenant argued that a copy of the intro package was never received by the tenant and that a copy of the Telus advert was not received until September 2, 2020.

The tenant also seeks compensation of \$7,687.23 for the loss of quiet enjoyment due to excessive banging noise overhead from a neighboring unit. The tenant has clarified that this monetary claim is broken down into a detailed list below.

\$7,687.23	Loss of Reasonable Quiet Enjoyment
	\$816.67, 100% Rent Reduction, Oct 16-29
	\$758.33, 50% Rent Reduction, Nov 6- Nov18
	\$2,467.21, 100% Rent Reduction, Nov 18-Dec31
	\$1,750.00, Loss of quiet enjoyment, threats
	\$1,852.35, Moving Expenses
	\$42.67, Cost of Registered Mail
\$461.25	Loss of Income due to loss of quiet enjoyment

The tenant stated that noise would begin early between 6am -8pm every hour between October 16- 29 without any breaks. The tenant submitted a noise log called "Noise_Disruption_Log" which the tenant stated provides a record of noise heard in the unit between September 5, 2020 and November 18, 2020. The tenant stated that the noise issue was reported to the landlord many times beginning on September 9, 2020. The tenant also stated that as a result the tenant suffered from a loss of sleep in which the tenant who is a medical professional was forced to not be able to go into work. The tenant seeks moving costs as he was forced to end the tenancy and find a new tenancy. The tenant has also claimed that he suffered from threats made by the landlord.

The tenant stated that the repeated noise issues were reported to the landlord many times. The tenant stated that the landlord failed to act to resolve the noise issues and the tenant continued to suffer a loss of quiet enjoyment of the rental unit due to the repeated noise. The tenant referred to several of the submitted audio recordings of “overhead banging and thumps” noises in files “Audio_Recording_(Time_Stamped)_-_Nov_20_19-36” and “Audio_Recording_(Time_Stamped)_-_Nov_20_18-41”.

The tenant stated that he suffered a loss of quiet enjoyment due to threats, intimidation and emotional distress purposely made by the landlord. The tenant stated that the \$1,750.00 claim is equal to one months rent and is an arbitrary amount made by the tenant. The tenant claims that the landlord threatened to “countersue” the tenant if any more complaints were filed with the landlord. The tenant stated this is shown in an email sent by the landlord dated November 18, 2020. It states in part,

Please be advised that we took your complaints of noise disturbances seriously. We have investigated with the residents in the upstairs unit on multiple occasions. **Our Investigations have led to no substantiation of “annoying, harassing, or disturbing” to be considered a legitimate complaint for noise.** It has not raised to the level of a material breach to the tenancy agreement with the unit above.

The residents above have gone above and beyond to prevent the noise, and installed rugs in each room to help with your ‘discomfort’ on their own time and expense.

Centurion has gone above and beyond to mitigate this issue and we feel your demands are unreasonable. Centurion will not offer any more compensation towards the noise complaints. Centurion has provided you with compensation for spoiled food which, we feel is more than reasonable compensation for that particular issue.

If remaining in the unit is no longer agreeable to you, we are able to offer you to mutually agree to end the tenancy. Please advise if you wish to proceed with this option.

If you do not wish to move out, you are within your full right to file for dispute with the Residential Tenancy Branch. We will leave this up to arbitration to decide an outcome based on evidence provided from each party.

The residents above are legitimately concerned about number of complaints against them. Please keep in mind with the number of complaints we may be

forced to counter file based on harassment to landlord, and other residents in the building.

Please advise as to how you wish to proceed. We want to bring this matter to a satisfactory result for all involved.

[reproduced as written with emphasis by the tenant]

The tenant seeks compensation for moving expenses of \$1,852.35 for his move out costs. The tenant paid for a trailer rental, purchased a hitch adaptor, moving assistance (labour) from a friend and time, labor and emotional distress equal to one months rent. The tenant states that as he was forced to move out due to the landlord's inability to ensure quiet enjoyment of the rental property the tenant is seeking compensation for the costs of moving. The tenant stated that compensation was based on the tenant having to organize a moveout within 1 ¼ months.

The tenant seeks compensation of \$461.25 for the loss of income due to the loss of quiet enjoyment of the rental unit. The tenant claims that on November 20, 2020 loud music, cheering, heavy stomping and what sounded like purposeful and directed banging on the floor above the tenants occurred. The tenant referred to the "Audio Recording (Time Stamped)- Nov 20 18:52" and "Audio Recording (Time Stamped) – Nov 20 19:36" as proof of the noise. The tenant also referred to:

Audio Recording (Time Stamped) – Nov 30 21:01

Audio Recording (Time Stamped) – Dec 02 11:29

Audio Recording (Time Stamped) – Dec 11 20:39

Audio Recording (Time Stamped) – Dec 11 21:42

Audio Recording (Time Stamped) – Dec 15 12:34

Audio Recording (Time Stamped) – Dec 28 20:07

Audio Recording (Time Stamped) – Dec 30 18:04

The tenant stated that these are examples of the continued disturbances coming from the unit above. The tenant stated that due to these disturbances the tenant suffered a loss of income due to lack of sleep to perform properly as a medical practitioner. The tenant stated that he had emailed his supervisor at work informing him that he was calling in sick due to not getting any sleep. The tenant stated that he suffered the loss of income of 11.25 hours at \$41.00 per hour.

The landlord disputed the tenant's claims arguing that the landlord did investigate the tenant's claims and responded on October 6, 2020 finding insufficient noise that would

disturb the tenant's quiet enjoyment of the rental unit. The landlord stated that this was all detailed in an email sent to the tenant with the final notation of "How do you wish to proceed?" The landlord stated that they received nothing until the tenant notified the landlord of his notice to end the tenancy. The landlord argues that the tenant made a choice to move out but had other options one of which was to file an application for dispute resolution regarding the tenant's claims at that time. The landlord argues that based on the level of disturbance in the evidence provided by the tenant, the tenant is not entitled to a rent reduction or compensation for a loss of quiet enjoyment.

The landlord stated that the recordings provided by the tenant were reviewed and found only occasional noises normal in a multi unit building, but nothing that would have the tenant suffer a loss of quiet enjoyment or be disruptive. The landlord confirmed that the tenant was notified of this and the landlord received no further complaints from the tenant.

The landlord disputes the tenant's claim of threats stating only that the email in reference by the tenant was to update the tenant on the noise complaints and to offer options to the tenant. The landlord argues that they "never told the tenant he can't file an application". The landlord notes that this is specifically referred to the tenant in the email that it is his choice.

The landlord argues that the landlord cannot be found liable to the tenant's loss of income as the tenant did not notify the landlord of that issue until November 23, 2020, 3 days later. The landlord had no chance of mitigate the noise issue. The landlord stated that the tenant did not report the noise complaint to the police. The landlord argued that at no time did the landlord forbid or threaten the tenant to stop reporting issues. The landlord stated that none of the audio recordings of disturbance submitted by the tenant were for the daytime and not at night. The landlord also argued that all of the recordings were made in the living room and not the bedroom.

The landlord stated that the tenant has failed to provide any evidence of his claims and has not met the standards in being substantially interfered with in the normal occupation of the rental unit. The landlord argues that the landlord has taken reasonable steps in responding to the tenant's claims.

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Policy Guideline #6, Entitlement to Quiet Enjoyment states in part,

Under section 28 of the Residential Tenancy Act (RTA) and section 22 of the Manufactured Home Park Tenancy Act (MHPTA) a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- *reasonable privacy;*
- *freedom from unreasonable disturbance;*
- *exclusive possession, subject to the landlord's right of entry under the Legislation; and*
- *use of common areas for reasonable and lawful purposes, free from significant interference.*

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

On the tenant's first claim of \$1,680.00, I find that the tenant has failed to establish a claim. Despite the tenant arguing that the landlord had failed to provide a move-in incentive regarding free internet and cable for 1 year the tenant has failed to provide

sufficient evidence of false advertising that this offer was part of the tenancy agreement. Both parties confirmed that this was an incentive offer for new tenancies. The tenant had argued that this should have been part of the signed tenancy agreement. Both parties confirmed that the incentive offer was not listed in the signed tenancy agreement. The landlord provided undisputed evidence that this was an incentive offer made by the developer in conjunction with the local provider. On this basis, I find on a balance of probabilities that the tenant has failed to provide sufficient evidence that the 1 year of free internet and cable were part of the tenancy agreement and this portion of the claim is dismissed without leave to reapply.

On the tenant's claim regarding the loss of quiet enjoyment for the following:

\$816.67	100% Rent Reduction, Oct 16-29
\$758.33	50% Rent Reduction, Nov 6- Nov18
\$2,467.21	100% Rent Reduction, Nov 18-Dec31
\$1,750.00	Loss of quiet enjoyment, threats
\$461.25	Loss of Income due to loss of quiet enjoyment

I find in these claims the tenant has failed to provide sufficient evidence of a loss of quiet enjoyment. While the tenant has submitted approximately 79 audio recordings as evidence, the tenant has only referred to 11 during the hearing for his submission. During the hearing the audio recordings were reviewed using a headset and that no discernable noise was detected that could be classified as substantial. The audio recordings were reviewed again at the conclusion of the hearing using a headset with the available volume control set at 125%. Despite this I was unable to discern any substantial noise from the recording that could be described as disturbing. I also find in reviewing the tenant's primary piece of evidence regarding threats made by the landlord to be unproven. The email referred to by both parties is clear in its content. However, the tenant has interpreted the caution provided by the landlord as a threat against making further complaints. I find that this is unsubstantiated by the tenant. On this basis in conjunction with the evidence submitted by both parties regarding the tenant's notifications to the landlord, I find that the landlord has acted reasonably in the circumstances. The landlord upon being notified investigated the complaint and reported back to the tenant. The results of that report were not satisfactory to the tenant. These portions of the tenant's claim are dismissed without leave to reapply.

On the tenant's claim for moving expenses of \$1,852.35, I find that the tenant has failed. Despite the tenant arguing that he was forced to move-out of the rental unit due to the landlord's inability to resolve the issue, the tenancy ended as a result of a mutual

agreement to end tenancy on December 31, 2020 as confirmed by both parties. I find that this is in keeping with the landlord's email offer referred to by the tenant as part of a threat.

On the tenant's claim for \$42.67 the cost of Registered Mail I find it is dismissed. Section 72 of the Act addresses Director's orders: fees and monetary order. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of registered mail costs are dismissed.

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: June 11, 2021

Residential Tenancy Branch