



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT, MNDCT

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;
- 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 were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenant served the landlord with the notice of hearing package via pre-agreed email on June 7, 2021 and again later with the tenant's submitted documentary evidence. The landlord did not submit any documentary evidence. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that the landlord has been sufficiently served as per section 71 of the Act.

At the outset, the tenant's application requests were clarified. The tenant stated that after the application was filed the tenant vacated the rental unit on August 31, 2021. As such, the tenant's request for an order for the landlord to comply is no longer required

and should be cancelled. As such, no further action is required for this portion of the application.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for 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.

The tenant seeks a monetary claim of \$1,675.00 which consists of:

\$1,575.00	Compensation, 1 months rent
\$100.00	Filing Fee

The tenant provided written details which states:

The noise issue hasn't been solved in my unit. I haven't been able to sleep in the unit for a long time which has caused serious health issue for me. I had to rent another place and moved out earlier before ending my contract so I had to pay for both places at the same time. I have attached related/additional documents.

[reproduced as written]

The tenant stated that she seeks compensation for the loss of quiet enjoyment equal to one months rent for \$1,575.00. The tenant stated that this was not based on any actual losses but what she felt was fair.

The tenant clarified that since December 26, 2020 she had notified the landlord of numerous noise complaints regarding the upstairs neighbor. The tenant stated she must have notified the landlord on atleast 10 separate occasions. The tenant claims that no action was taken by the landlord and as a result the tenant had lost the quiet enjoyment of the rental unit. The tenant stated that her health had suffered from "insomnia due to noises comes form the upper stairs neighbor who make so much noises mostly between 1 to 8 int eh morning." The tenant stated that this was reported to her Doctor who in turn recorded the issue that "She sure will get sleep deprivation

and it can cause her low energy and anxiety the next day. If this continues, it might causes chronic anxiety and insomnia for her...”

Both parties agreed that the tenant gave notice to end the tenancy on July 28, 2021 via email to end the tenancy on August 31, 2021.

The landlord disputed the tenant’s claim arguing that the landlord did respond to the tenant’s concerns. The landlord provided direct testimony that the tenant was to report all noise complaints to the building concierge and police; the landlord had contacted the strata council to report the numerous noise complaints and that warning notices were issued by the strata.

The tenant referenced a police report that on May 5, 2021 a noise complaint was filed with the police at 00:09 hours of a loud noise. The report states that when police attended no noise could be heard. The report states that the tenant had been reporting ongoing noise complaints to the Strata and her landlord for approximately 4 months.

The tenant also stated that a submitted copy of a complaint letter to her landlord dated May 7, 2021 requesting assistance to resolve the numerous noise complaints. The tenant stated that the landlord has failed to take any action.

The landlord argues that that the landlord had contacted the strata regarding the tenant’s concerns. The tenant clarified that the landlord may have contacted the strata, but did not provide any proof of action to the tenant.

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.

In this case, I accept the undisputed affirmed evidence of both parties that the tenant had reported numerous complaints of loud noise disturbing her peace and quiet

enjoyment of the rental unit. Both parties confirmed that the tenant had reported loud noises late at night to the landlord, building concierge, strata and the police.

Residential Tenancy Branch Policy Guideline #16, Compensation for Damage or Loss states in part,

This Policy Guideline addresses the criteria for awarding compensation, and the limitation periods for filing claims...

Under section 7 of both the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*:

- a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and
- the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Under section 67 of the *Residential Tenancy Act* and section 60 of the *Manufactured Home Park Tenancy Act*, if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may:

- determine the amount of compensation that is due; and
- order that the responsible party pay compensation to the other party.

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- loss of access to any part of the residential property provided under a tenancy agreement;
- loss of a service or facility provided under a tenancy agreement;
- loss of quiet enjoyment (see Policy Guideline 6);
- loss of rental income that was to be received under a tenancy agreement and costs associated;
- and damage to a person, including both physical and mental.

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

This Policy Guideline deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement.

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.

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

In this claim the tenant argues that the landlord who had received her complaints took no action to resolve the issue. The landlord disputed this claim arguing that the landlord took all possible steps to resolve the problem.

I find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord. Despite the landlord arguing that all possible responses to the tenant's claims were made the landlord failed to provide any evidence in support. In contrast the tenant had submitted a copy of the initial December 26, 2020 email notifying the landlord of the noise issue with corresponding follow up contacts with the landlord. The tenant submitted copies of 7 Strata Bylaw Violation Reports from March 15, 2021 to April 14, 2021 of incidents reported by the tenant directly to the Strata. The tenant

stated that all reasonable action was taken by the tenant and not the landlord. I find that the tenant has provided sufficient evidence to satisfy me that the landlord failed to act to resolve the reported noise issues.

The tenant's claim is for \$1,575.00 which is equal to one months rent. The tenant stated that this amount was based on what she felt was fair but did not provide any quantitative evidence for its calculation. I note the tenant's original written description references the tenant moving out early and paying rent for two different tenancies. I also note that the tenant had originally noted that it was for the cost of the rent for this tenancy. I find that the tenant has failed to provide sufficient evidence in support of the monetary claim amount of \$1,575.00. However, I do find that the tenant is entitled to a nominal award of \$50.00. The tenant failed to provide sufficient evidence of significant loss but has proven that an infraction has occurred that the tenant has suffered a loss of quiet enjoyment.

The tenant is entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$150.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

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: September 22, 2021

Residential Tenancy Branch