



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, MNDCT, FFT**

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;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The tenant testified that they served the landlord with their application and evidence by registered mail sent on June 11, 2021. The tenant submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the landlord is deemed served with the landlord's materials on June 16, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

At the outset of the hearing, the tenant made an application requesting to amend the monetary amount of the claim sought. The tenant indicated that since the application was filed they have continued to incur damages and loss. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as ongoing breaches leading to ongoing losses is reasonably foreseeable, I allow the tenant to amend the amount of their monetary claim.

Issue(s) to be Decided

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

The tenant provided undisputed evidence regarding the following facts. This periodic tenancy began on February 1, 2020. The monthly rent is \$750.00 payable on the first of each month. The rental unit is a suite in a multi-unit building with 8 units.

The tenant submits that since the inception of the tenancy two of the other occupants of the building have acted in a disruptive manner that has significantly breached their right to quiet enjoyment of the rental unit. The tenant testified that the other occupants make excessive noise at all hours of the day and night, damage and destroy the common areas of the building and engage in hostile interactions with the residents of the property. The tenant gave evidence of witnessing violent behaviour by these occupants including loud shouting, aggressive posturing and physical fights. The tenant said that they have made multiple requests to the landlord to address the situation but no action has been taken and the occupants continue to occupy the rental building.

The tenant seeks an order of compliance that the landlord take reasonable action to address the ongoing disturbance caused by the other occupants of the building.

The tenant described calling the authorities on a number of occasions and spending much of their time outside of the rental unit, staying overnight at hotels and with their partner for fear of the actions of the other occupants. The tenant said that they do not have the economic means to move out of the rental unit but have been unable to relax and enjoy the rental unit due to the ongoing disruption and behaviour of the other

occupants which have not been rectified by the landlord despite their numerous requests.

The tenant submitted into documentary evidence copies of correspondence to the landlord complaining about the behaviour of the other occupants, receipts for stays at hotels and Air B&Bs when the level of noise was greatest and they were unable to occupy the rental unit and video and audio recordings of the disturbances.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

Section 28 of the *Residential Tenancy Act* speaks to a tenant's right to quiet enjoyment, and provides as follows:

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.

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

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 a 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 covenant of 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.

I am satisfied, on a balance of probabilities, that the conduct of the other occupants of the rental building has had a profound detrimental effect on the tenants, the value of the tenancy and the tenant's ability to have quiet enjoyment of the rental unit. I find the undisputed testimony of the tenant, supported in their documentary materials to be sufficient to demonstrate that the tenant has made multiple requests to the landlord to take some action to correct the source of the disturbance.

Based on the evidence I find that the landlord failed to take reasonable steps and allowed the ongoing disturbance to continue for years causing a significant disruption to the tenant's lifestyle, ability to enjoy the rental unit and the value of the tenancy. I further accept that the hostile, aggressive and dangerous conduct of the other occupants left the tenant fearing for their personal safety.

I note that the tenant failed to submit a proper Monetary Order worksheet or breakdown of their claim. The tenant has submitted a handful of receipt as well as estimates, some of which duplicate costs. In addition the tenant has submitted receipts for costs of mail and photocopies which I find are not losses attributable to the tenancy.

I accept the evidence of the tenant that there were multiple nights when they were unable to reside in their rental unit due to the frequency, volume and nature of the noise caused by the other occupants. I am satisfied with the copies of the invoices for the hotels and Air B&B stays that they have incurred monetary losses in the amount of \$1,643.89 during the period in May 2021 when the disturbance was greatest. I issue a monetary award in that amount accordingly.

I am satisfied, on the basis of the totality of the evidence, that the landlord has breached their duty to provide quiet enjoyment of the rental unit by failing to take reasonable steps after being informed by the tenant of the unreasonable disturbance. I find that as a result of the landlord's failure to take reasonable measures the tenant incurred significant losses. Under the circumstances, I find that a monetary award of \$1,900.00 representing a retroactive reduction in rent for each of the 19 months of this tenancy of \$100.00, approximately 15% of the monthly rent, is appropriate.

As the tenant was successful in their application they are also entitled to recover their filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$3,643.89. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord is ordered to take appropriate action to ensure the tenant's right to quiet enjoyment of the rental unit is preserved by investigating the complaints and taking reasonable measures.

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 24, 2021

Residential Tenancy Branch