



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MORE THAN A ROOF MENNONITE HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC

Introduction

On June 30, 2021, the Tenant applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), Regulation, or tenancy agreement. On October 7, 2021 the Tenant amended the application to increase the amount of the monetary claim.

The matter was set as a teleconference hearing. The Landlord and the Tenant attended the hearing. The Tenant was assisted by an advocate. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or compensation for damage or loss?

Background and Evidence

The parties testified that the tenancy began on May1, 2018, as a five-month fixed term tenancy that continued thereafter on a month-to-month basis. The Tenant pays subsidized rent in the amount of \$482.00 each month.

The rental unit is a multi unit residential apartment building containing 15 floors and 240 rental units.

The Tenant is seeking compensation from the Landlord due to a loss of quiet enjoyment of the rental property due to noise disturbances.

The Tenant testified that he is seeking compensation for the period from Jan 2020 to September 2021 following a dispute resolution hearing regarding the same issue that the parties attended in January 2020.

The Tenant is seeking to recover the full amount of rent paid for each day that he experienced a noise disturbance. For example, the monthly rent is divided by 30 days to equal a daily amount equalling 3.33% of the monthly rent. The Tenant provided a document where he has reported how many days each month that he experienced a noise disturbances over the 18-month period.

The Tenant was asked to describe the disturbances and he replied that he often hears noise after 11 pm coming from unit located above him that sounds like a chair being dragged on a floor, and the sound of what he described as a toilet seat closing loudly. The Tenant stated that these sounds are the most intrusive noise he is experiencing.

The Tenant stated that he reported his noise concerns to the Landlord, and he is not sure the Landlord has dealt with the complaint.

The Tenant's advocate sated that the parties previously attended a dispute resolution proceeding where the matter was settled on the agreement that the LAndlrod would investigate the source of the noise and report back to the Tenant. The Advocate stated that the Landlord reported back on the issue on March 18, 2020; however, they are not sure the Landlord spoke to all tenants.

In reply, the Landlord testified that the Tenant has lived in a number of different units in the building and has been moved to accommodate his concerns.

The Landlord testified that the Tenant alerted him about noise and that he spoke to the occupant living above the Tenant. The Landlord stated that he asked the occupant to

mitigate against noise, and that the occupant has placed a carpet over some flooring. The Landlord stated that the occupant is female and has no need to be lifting and dropping a toilet seat. The Landlord stated that the occupant is feeling stressed by the Tenant's accusations.

The Landlord stated that they issued letters regarding noise to the occupants living above and below the Tenant and they also mentioned noise issues in a building newsletter.

The Landlord points out that the Tenant has a medical condition that indicates he is very sensitive to noise. The Landlord referenced the Tenant's documentary evidence of a medical condition.

The Landlord stated that the Tenant has not witnessed anyone making noise and noise could just be regular building noise. The Landlord stated that there is hot water heating for the units and there is expansion and contraction taking place. The Landlord testified that the building is concrete construction, and the rental units have vinyl and laminate flooring.

The Landlord also pointed out that the occupant living above the Tenant was not present in her rental unit for an entire month which includes some of the dates that the Tenant has complained about.

The Landlord stated that they have done what they can for the Tenant, and it appears that the building does not meet with the Tenant's medical condition.

Analysis

Section 28 of the Act provides that a Tenant is entitled to quiet enjoyment including, reasonable privacy and freedom from unreasonable disturbance.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

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.

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.

The Residential Tenancy Branch Policy Guideline #16 Compensation for Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

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;***
- *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*

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I make the following findings:

I accept the Tenant's testimony that he is being disturbed by noise. The issue for me to determine is whether or not the noise is an unreasonable disturbance.

I have considered the Tenant's evidence that the noises sound like a chair being moved/ dragged and the sound of a toilet seat closing. I find that the reported noise is not from something intentionally caused by somebody yelling; or playing a stereo too loudly. I find that noise comes from normal day to day living that is reasonable to expect when living in a multi unit residential building. There is no expectation that a Tenant will curtail the normal use of a rental unit after 11:00 pm.

I find that noises or disturbances caused by a persons normal use of a rental unit is more of a temporary discomfort or inconvenience. I am mindful that the Tenant has a medical condition that makes him sensitive to noise; however, the Landlord cannot reasonably be expected to curtail/ restrict other occupants from the normal use of their rental units. I also find that it is not reasonable that the Landlord should have to compensate the Tenant for being extra sensitive to noise that appears to be from normal day to day living.

With respect to the age and character of the building, the building is approximately 45 years old, and it is not reasonable to order the Landlord to replace the existing flooring in all the units surrounding the Tenant.

I find that the Landlord took reasonable steps to deal with the Tenant's report of noise and that the Landlord did not breach the Tenants right to quiet enjoyment by failing to take any action.

The Tenants' claim for compensation due to a loss of quiet enjoyment of the rental unit is dismissed in its entirety.

Conclusion

The Tenant was not successful with his claim to be compensated for a loss of quiet enjoyment. The Tenant's application is dismissed.

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: November 03, 2021

Residential Tenancy Branch