



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dynamic Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened in response to an application by the Tenant for a monetary order for compensation pursuant to section 67 of the *Residential Tenancy Act* (the “Act”). The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed receipt of each other’s evidence and were prepared to proceed. The Parties confirmed no recording devices were being used for the hearing.

Issue(s) to be Decided

Did the Landlord fail to provide quiet enjoyment of the unit?

Is the Tenant entitled to the compensation claimed??

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on June 1, 2020 and ended on June 30, 2021. Rent of \$2,250.00 was payable on the first day of each month. The security deposit has been dealt with.

The Tenant states that loud and disturbing construction noise from the commercial space immediately below the Tenant’s unit started on or about March 6 and continued to the end of the tenancy causing the Tenant to lose enjoyment of their unit. The Tenant states that the noise was constant between the hours of 7:00 a.m. and 6:00 p.m.

for the seven days of each week. The Tenant provides videos of the noise. The Tenant states that from March 4, 2021 onward the Tenant sent the Landlord several emails about the noise and that the Landlord did nothing and did no investigation. The Tenant states that the Landlord only response to the Tenant's complaints was "tough luck" and "it is what it is".

The Tenant states that the commercial space was vacant at the onset of the tenancy and that part of the reason the Tenant moved into the unit was because the commercial space was empty. The Tenant states that they work in the construction industry and expected the new building to have concrete floors separating the units or good soundproofing. The Tenant states that they did expect that the commercial space would be occupied but that the business would not be running overnight. The Tenant states that for this reason and given the view the Tenant chose this unit when they had the choice of any of the units, all of which were vacant at the time. The Tenant expected to be living in their "forever place" and states that this "speaks volumes of how bad it was".

The Tenant states that while they were able to sleep and cook their meals in the unit their only choice was to stay in the noise during the day or go out. The Tenant states that they did leave the unit periodically. The Tenant states that they were off work for health reasons for the duration of the tenancy and that the noise added to the Tenant's stress amid the challenges from the pandemic. The Tenant states that their health problems were exacerbated by the constant noise. The Tenant confirms that they have not provided any supporting medical evidence. The Tenant states that they lost a roommate because of the noise and the Tenant provides a letter from this person.

The Tenant believes that the Landlord was not motivated to correct the disturbance as rental units were in great demand amid limited supply and that the Landlord could obtain higher rent for the unit if the Tenant moved out. The Tenant states that the Landlord informed the Tenant that the rent for the unit would increase for the next

tenancy. The Tenant states that their current rental unit is more expensive. The Tenant states that they did not make any application during the tenancy to seek any relief from the noise. The Tenant confirms that they chose to move out of the unit instead of staying any longer and gave notice to end the tenancy. The Tenant estimates a loss of enjoyment of the unit at 50% and claims compensation of \$4,700.00. The Tenant also claims \$1,500.00 for the Tenant's time in looking for a new place and \$1,056.30 for moving costs.

The Landlord states that after receiving the first complaint of the noise they reached out to the construction company who informed the Landlord that they were doing their best but were in compliance with the noise bylaws. The Landlord states that the unit is separated from the commercial space by a wood frame with a concrete sheet. The Landlord states that they believe the building is up to code for sound proofing as the city gave the Landlord occupancy permits. The Landlord states that the subsequent rental rate for the unit was raised by \$225.00 per month. The Landlord states that that the commercial space is also under another unit, identical to the Tenant's unit, and that for the duration of that tenancy from June 2020 to September 2021 there were never any complaints of noise. The Landlord states that this tenancy ended because of the tenant's relocation for work. The Landlord states that the construction ended in July 2021.

The Tenant states that the other tenants did not move out for work purposes as the Tenant could easily hear voices from the commercial space and overheard the owner and a construction person worried about noise from a busy bar and restaurant.

Analysis

Section 28(b) of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to freedom from unreasonable disturbance. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. This section

further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss.

Given the undisputed evidence that the Tenant ended the tenancy, I find that the costs for finding a new rental unit and moving arise from the Tenant's act and not from a breach by the Landlord. I also consider that the costs are related to the Tenant's obligation to take reasonable steps to minimize its loss from the construction noise and find that the Tenant did take such steps. For these reasons I dismiss the claims for \$1,500.00 and \$1,056.30.

Given the Tenant's undisputed video evidence I find that the Tenant was subjected to extremely loud construction noises from the commercial space. Give the undisputed evidence of the work schedule I also find that the noise was constant leading to a significant loss of the Tenant's quiet enjoyment of the unit. While the Tenant may have considered future noise from the commercial space in their decision to rent the unit, it is undisputed that the Landlord never informed the Tenant of any construction plans for the Tenant to consider at any time. Given the Landlord's evidence that they only spoke with the construction company about the noise and did nothing else, such an investigation of the noise and for any required sound proofing, I find that the Landlord failed to comply with its obligation to provide the Tenant with quiet enjoyment of the unit. Given the extent and volume of the noise I consider that the Tenant's claim for compensation is reasonable and appropriate. For these reasons I find that the Tenant is entitled to the compensation claimed of **\$4,700.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$4,700.00**. If necessary, this order may be filed in the Small Claims Court 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 Act.

Dated: March 16, 2022

Residential Tenancy Branch