



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Keefer Apartments Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC

Introduction

The Tenant filed an Application for Dispute Resolution on January 28, 2022 seeking the Landlord's compliance with the legislation and/or tenancy agreement, and compensation for money owed. They also requested reimbursement of the Application filing fee.

The matter proceeded by way of a hearing on May 3, 2022 pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act"). In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

The Tenant and an agent for the Landlord (hereinafter the "Landlord") both attended the hearing, and I provided each with the opportunity to present oral testimony. In the hearing, the Landlord confirmed they received the notice of this hearing and the Tenant's evidence. Reciprocally, the Tenant verified they received the Landlord's prepared evidence.

Issue(s) to be Decided

Is the Landlord obligated to comply with the *Act*, the *Residential Tenancy Regulation*, and/or the tenancy agreement, pursuant to s. 62 of the *Act*?

Is the Tenant eligible for compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Background and Evidence

The Tenant provided a copy of the tenancy agreement between the parties. In the hearing, both the Landlord and the Tenant agreed it was a basic format agreement. An addendum to the agreement specifies that there is to be “no unreasonable noise” for Monday to Saturday before 7:00am and after 10:00pm, and Sunday before 10:00am and after 10:00pm.

The Tenant presented their difficulty with the neighbouring rental unit, where that occupant has a guest on a regular basis. The Tenant’s difficulty ranged from middle-of-the-night audible noise from the neighbouring unit, to normal talking within the neighbouring unit that is amplified due to a second person being there. This occurs between 10pm and 12am, and is simply a matter of normal talking within that unit, impacted by the age and thin walls in the older house. This has continued for approximately 8 months. The Tenant’s sleep is negatively impacted for this length of time.

The Tenant submitted sound files on which music is audible, recorded through their own wall with that sound emanating from the neighbouring unit. These vary in subject, from music playing, to talking in the middle of the night, to tv sound in the adjacent unit, to fighting.

The Tenant also sent images that show their text message complaints to the Landlord. For example, from January 18 one message reads: “there is reasonable noise that I don’t care to complain for this is actually ridiculously inappropriate for the time.” They also submitted emails on the same issue, those that they submit received no substantive response from the Landlord.

The Tenant requests for the Landlord’s compliance with their right to quiet enjoyment in their own rental unit. Their sleep is affected with the neighbour’s noise. Further, they have made several complaints and the Landlord “has not done anything.” Given their work, they require silence from the hours of 11:00pm to 7:00am.

At the time of their Application, they requested \$500, which was \$100 for each month this loss of quiet enjoyment. They stated the issue is not truly about money for them; rather, they have the need for adequate rest and their well-being is being affected, especially at work. Additionally, they are feeling stress and a certain level of anxiety due to being perceived as inconsiderate when they feel they are left dealing with the issue on their own by banging on the wall in the middle of the night when the noise ensues.

The Landlord responded to the Tenant's submissions by stating they had no previous complaints about the Tenant's neighbour. They spoke to the owner and there is nothing that can be done about the frequency of their guest's visits. This neighbour has been in the building for about 25 years. The owner offered the Tenant one-half monthly rent as compensation, and no penalty of any sort for ending the tenancy early or with shorter notice.

The Tenant's neighbour attended the hearing and noted the banging on their wall now occurs every day. This includes even when they are home alone. Their activities are "[within the] absolutely normal threshold of hearing."

The Tenant, in response, reiterated their direct claims on specific types of noise that wakes them in the middle of the night, prompting their banging on the wall.

Analysis

The *Act* s. 28 is clear on a tenant having the right to quiet enjoyment; this includes freedom from unreasonable disturbance.

I find positively that the Tenant's well-being has been affected by the continued noise they are subjected to throughout the nights. They provided sufficient evidence of this in the form of audio recordings made through their own wall. Given the age and structure of the building, what is reasonable in these circumstances is something quite different from what would normally be the case in a larger building with many units. The Tenant emphasized their efforts at finding a better living arrangement; however, I find the reality is that they are in this predicament with having no options to move and having to endure a situation that is not amenable to their sound sleep.

I conclude the Landlord is at a loss at what sort of solution would satisfy the Tenant's needs as well as those of their neighbour. What is clear is that the neighbour never had to significantly alter their activities or resultant sound because of a neighbour who is more sensitive to those issues.

The primary consideration of what is reasonable in these circumstances is with due regard to the structure of the building, being older on a more of a conduit for sound, as well as the very close logistics of the Tenant's unit beside the other. That alters the acceptable sound level to something that will satisfy a neighbour, who may be trying to rest mere metres away.

I order the Landlord to impose the same conditions that are present in the Tenant's own addendum to those other building occupants. They must be made aware of those particular points in place; from the evidence and testimony of the parties here, it was not apparent that all building residents were aware of the rule as it appears in the Tenant's addendum. The Landlord must make this addendum known to the other building residents because if it appears in one resident's own tenancy agreement, so shall it appear in every resident's tenancy agreement. I so order to make that important rule known to each of the building residents as soon as possible. The Landlord must make the Tenant aware – in a formal written manner – that they have so made all building residents aware of the time restriction on what the addendum refers to as noise. That addendum must be in place for each building resident, unaltered and the same for each building resident. Providing notification to the Tenant that others are aware will both give assurance to the Tenant that their right to quiet enjoyment (as it affects their health) is being taken seriously, and give the Tenant a written record going forward should noise issues escalate to the point where another dispute resolution process becomes necessary.

On the issue of compensation, under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. The *Act* s. 65 grants authority to make an order granting rent reduction:

. . . if the director finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement, the director may make any of the following orders:

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

For this consideration, I find the Tenant's right to quiet enjoyment in this living arrangement has been negatively impacted in a unique way. I find the Tenant has presented compelling evidence of the value of the loss of full normal use of the rental unit, free from disturbance during what the Landlord has presented to them as the quiet hours. The Tenant is having to endure not only the impact to their sleep, but also the negative reception from their neighbour (as exhibited in the hearing), and the lack of a proactive measure from the Landlord.

I find there has been a reduction in the value of the tenancy agreement. This has existed from the time the Tenant presented that a guest frequented their neighbour's rental unit, through to the present, with the issue as yet unresolved.

For the period of time the issue has persisted – that is, the full months of September 2021 through to May 2022 – I order a retroactive rent reduction in the amount of \$100 for each of these calendar months. By s. 67 of the *Act*, I award the Tenant recovery of this amount. The

Tenant is authorized to deduct the amount of \$900 from upcoming rental payments in satisfaction of this award.

Going forward, I authorize the Tenant to deduct the amount of \$100 per month from rent until the Landlord complies with the above noted order for making that addendum a part of all rental agreements in the building, including that of the Tenant's neighbour. This is where the Landlord's written notification of that to the Tenant is essential.

Conclusion

I find the Tenant is entitled to compensation in the form of past rent reduction in the amount of \$900. I authorize the Tenant to withhold this amount from future rent payments.

Going forward, I authorize the Tenant to withhold \$100 from future rent payments until the Landlord complies with the above noted orders for inspection and/or repairs. This reduced rent commences in June 2022. This reduction applies *only* if the Landlord fails to comply with the specific order for the provision of building rules, noted above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 16, 2022

Residential Tenancy Branch