Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LAKEVIEW MANOR (L.M.3) and
[tenant name suppressed to protect privacy]

DECISION

Dispute codes FFT, MNDCT, MNSD, OT

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;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

At the outset of the hearing, the tenant confirmed that his application to request a return of the security deposit was made by mistake and this part of the application was withdrawn.

Issues

Is the tenant entitled to a monetary order for damage or loss?
Should the landlord be ordered to comply with the Act?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background & Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the tenant, not all the details of the submissions and/or arguments are reproduced here.

The rental unit was an apartment in a 23 unit building which is 40 years old. The tenancy began on October 1, 2021 and ended on January 31, 2022. The monthly rent was $1450.00. The tenant paid a security deposit of $725.00 at the start of the tenancy which was returned to the tenant in full on January 31, 2022.

The tenant's claim is for a total of $3310.80 for the breach of quiet enjoyment which he has broken down in his application as $2900.00 for return of ½ months rent for the duration of the 4-month tenancy, $101.62 for moving expenses, $133.52 for moving related hotel expenses, $48.48 and $27.18 for filing related costs and the $100.00 filing fee.

The tenant's main complaint was that the landlord misrepresented the rental unit in an advertisement as being a quiet building. The tenant testified that due to the close proximity to train tracks the building would rattle as trains were constantly going by every 15 minutes. The tenant testified that he was not able to sleep for 3 ½ months. The tenant also brought up various other concerns he had throughout the tenancy which he submits were ignored by the landlord. This included silverfish in the bathroom, an old broken TV, smoke and bad smell from unit below, dirty window for the start of the tenancy and a broken intercom.

The landlord submits there is nothing the landlord can do about the train noise. The landlord testified the tenant was notified of the train issue in a phone interview prior to the tenancy. The landlord submits it was the tenant's choice to accept the tenancy without first taking a look at the rental unit and its surroundings. The landlord submits they have 23 other units in the building, some of which have been long term tenants, and they have no concerns with the train noise.

The landlord testified that the tenant was also advised in the phone interview that the unit only comes with older style televisions. The landlord testified the TV was in working order when the tenant first moved in. The landlord did offer to replace the TV but for various reasons this did not come to fruition.

The landlord testified they responded to the tenant's claims of silverfish but there was not any evidence of silverfish. The landlord testified there is no silverfish infestation in

the unit or the building. The landlord testified that the new occupant of the unit has not made any complaints about silverfish.

The landlord testified that the smoke incident was just a result of the tenant below burning popcorn and they have since addressed the issue with that tenant.

The landlord acknowledged the tenant complaint of a dirty window but testified that they just did not consider it a priority issue to be dealt with during the fall and winter.

The landlord acknowledged there was an issue with the intercom. They called an electrician to look at it, but they had some delays in getting someone out for this small job.

Analysis

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline #6 "Entitlement to Quiet Enjoyment" provides the following guidance:

In order to prove a breach of the entitlement to quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the rental premises. This includes situations in which the landlord has directly caused the interference or was aware of the interference but failed to take reasonable steps to correct it. It is also necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. Temporary discomfort or inconvenience does not constitute a basis for a breach under this section. In determining the amount by which the value of the tenancy has been reduced, consideration will be given to the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation existed.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find the tenant's complaints about the train noise is not an unreasonable disturbance. The rental unit is located next to train tracks, and it was up to the tenant to do his proper due diligence before accepting the tenancy. The tenancy was also a month-to-month tenancy which the tenant could have ended any time upon providing sufficient notice to the landlord. The landlord's advertisement does refer to the rental unit as a quiet adult-oriented building, but this could just be referring to the type of tenants in the building and not the outside surroundings. Further, I accept the landlord's testimony that she did make the tenant aware of the nearby train tracks during the phone interview.

The tenant did not provide any breakdown or proof as to the actual losses suffered as a result of the various other complaints he had about the rental unit. Rather the tenant lumped everything together into one claim for re-imbursement of half the rent he paid. Out of all the other issues raised by the tenant I find the only items that may warrant any award are the broken TV and broken intercom. I find the landlord was aware of these issues and failed to correct them in a timely manner. As it is difficult to otherwise quantify any actual loss suffered by the tenant as a result of these items not being repaired, I award the tenant the nominal amount of $250.00.

I find the tenant submitted insufficient evidence of any silverfish infestation in his unit. The tenant has failed to show how often he was subjected to smoke or bad smell from the unit below and how this resulted in actual losses or the value of such losses. I find a dirty window does not constitute a breach of quiet enjoyment or any entitlement to compensation. The tenant's claims for any moving related expenses are also dismissed as I have found the landlord was not responsible for the tenant having to move.

As the tenant was only marginally successful in this application, I find that the tenant is not entitled to recover the $100.00 filing fee paid for this application as well as any other filing related costs.

As this tenancy has ended, I make no orders for the landlord to comply with the Act.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of $250.00. 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.

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: August 31, 2022

Residential Tenancy Branch