



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code MNDCT

Introduction

This hearing was convened to hear the Tenant's Application for Dispute Resolution made on March 10, 2022. The Tenant applied for an order granting compensation for monetary loss or other money owed, pursuant to the Residential Tenancy Act (the Act).

The Tenant attended the hearing on her own behalf. The Landlords were represented at the hearing by CR. Both the Tenant and CR provided a solemn affirmation.

The Tenant testified the Landlords were served with the Notice of Dispute Resolution Proceeding package by giving a copy to DR in person on March 21, 2022, with a witness present. Although the Tenant testified that CR would not accept service at that time, CR acknowledged receipt of these documents during the hearing. I find these documents were served on and received by the Landlords on March 21, 2022.

On behalf of the Landlords, CR testified that the documentary evidence on which the Landlords rely was served on the Tenant by registered mail on October 18, 2022. CR testified these documents were sent to a forwarding address provided by the Tenant. In support, the Landlord submitted a screen shot of tracking information. Although the Tenant testified these documents were not received, I find it is more likely than not that they were sent to the forwarding address provided by the Tenant but were not picked up by the Tenant. As a result, pursuant to sections 88 and 90 of the Act, I find these documents are deemed to have been received by the Tenant on October 23, 2022, five days after they were sent by registered mail.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue to be Decided

Is the Tenant entitled to an order for compensation for monetary loss or other money owed?

Background and Evidence

The parties agreed the tenancy began on October 1, 2021 and ended on March 31, 2022. During the tenancy, rent of \$858.00 per month was due on the first day of each month. The parties agreed the Tenant paid a security deposit of \$450.00. During the tenancy, the Tenant lived in the lower unit and the Landlords lived in the upper unit.

The Tenant's claim for \$1,240.00 is particularized on a Monetary Order Worksheet dated March 10, 2022. The Tenant's claim consists of \$90.00 for chiropractic treatments, \$149.70 for massage therapy, and five rent reductions of \$200.00 for each of October 2021, November 2021, December 2021, January 2022, and February 2022 (\$1,000.00).

The Tenant testified that the stress and lack of sleep she experienced while living in the rental unit exacerbated her pre-existing neuro-inflammatory disorder, resulting in nerve pain which required treatment. Specifically, the Tenant testified there was constant noise from the upper unit through the night. The Tenant testified she could hear footsteps, creaking floorboards, and the vibrations of drawers opening and closing. The Tenant also testified that she lost productivity as a result of the noise and that this impacted her job search efforts. Receipts for chiropractic treatments and massage therapy were submitted in support.

In reply, CR did not dispute that the Tenant heard noise from the upper unit but testified that the rental property is a 100-year-old house and that some sound is to be expected. CR testified that she has worked in the basement and has never noticed unreasonable noise. CR also testified that previous tenants have not reported issues with noise from the upper unit.

CR also testified that the Tenant started complaining as soon as she moved in and continued to do so for the duration of the tenancy. CR stated that she also has significant health issues which have been helped with a white noise machine and a blackout mask. These were recommended to the Tenant. CR also testified she tried to help the Tenant find an alternative place to live. CR testified that the Tenant told her about some significant health issues and stated that she feels sorry for the Tenant's situation.

Analysis

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

Section 67 of the Act empowers the director to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the Act. An applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss because of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlords. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

In this case, I find there is insufficient evidence before me to find the Landlord violated the Act, regulation, or the tenancy agreement. While I accept that the Tenant lives with a neuro-inflammatory disorder, I am not satisfied that the noise from above – footsteps, creaking floorboards, and drawers – gave rise to a violation of the Act, regulation, or the tenancy agreement. Further, I was not referred to any medical or other opinion to support the claim that noise from the Landlords' unit was sufficient to exacerbate symptoms related to the Tenant's pre-existing condition.

In addition, although not specifically referred to by the Tenant, section 28 of the Act protects a tenant's right to quiet enjoyment, which includes a right to freedom from unreasonable disturbance. Policy Guideline #6 confirms that the right protects a tenant from "substantial interference", not from any and all disturbance. However, for the reasons described above, I find there is insufficient evidence before me to conclude the Tenant was unreasonably disturbed. Noise from adjacent units such as footsteps, creaking floorboards, and furniture being used are to be expected, particularly in a 100-year-old home.

For the above reasons, I find the Tenant's requests to be reimbursed for the cost of chiropractic treatment and massage therapy, and for a return of rent paid during the tenancy, are dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed without leave to reapply.

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 9, 2022

Residential Tenancy Branch