



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, OLC**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*.
- An order requiring the landlord to comply with the *Act* pursuant to section 62.

The tenant attended. The building manager CM and the owner MT attended as agents for the corporate landlord.

The hearing process was explained, and an opportunity was given to ask questions. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence.

No issues were raised regarding service. I find each party served the other in compliance with the Act.

Neither party made any adjournment or accommodation requests.

Preliminary Issue: Settlement Discussions

Under section 63 of the Act, the Arbitrator may assist the parties to settle their dispute. If settled, the settlement may be recorded in the form of a Decision or an Order.

I explained the hearing and settlement processes more than once, and the potential outcomes and consequences, to both parties. Both parties asked questions, which I answered.

I informed the parties that I make my Decision after the hearing and not during the hearing.

I assisted the parties in efforts to settle the matter.

Settlement discussions were unsuccessful, and the hearing continued to conclusion.

Issue(s) to be Decided.

Is the tenant entitled to a Monetary Order for damages and compensation as well as reimbursement of the filing fee?

As the tenancy is over, the tenant's claim to order the landlord to comply is no longer an issue.

Background and Evidence

This hearing involved an application by the tenant for compensation of \$15,577.00 from the landlord because of loss of quiet enjoyment and related claims. The tenant claimed unreasonable noise in her unit that disturbed her peace, rest and enjoyment. The landlord took no steps to investigate or remediate.

The landlord claimed the sound heard by the tenant in her unit was reasonable for an apartment building of that age and purpose. Anything heard by the tenant related to normal family living and does not warrant any compensation. The tenant's complaints were unreasonable, exaggerated or fabricated. They requested the application be dismissed.

Evidence

Both parties provided a substantial amount of conflicting testimony during the lengthy hearing. They each submitted many documents as evidence.

However, in this Decision I will only address the facts and evidence which underpin my findings. I will summarize and address matters which are essential to determine the issues identified above. I will not summarize or address all documentary evidence and testimony.

Tenancy

The parties agreed the tenancy began on July 1, 2022. The rent was \$1,280.00. The tenancy ended on March 31, 2023.

The tenant provided a security deposit of \$640.00 the return of which is subject to another application. The file number for this upcoming hearing is referenced on the first page.

Tenant's Claim

The tenant submitted many documents including letters of complaint to the landlord and detailed sound reports.

In her written application, the tenant stated her claim was, “5 months and 12 days of rent due to breach of right to Quiet Enjoyment, breach of contract and aggravated damages from mental distress, anxiety and gossip/defamation.”

The tenant submitted a Monetary Order Worksheet claiming \$15, 577.00, detailed below:

ITEM	AMOUNT
Damages (return of rent)	11,610.00
Aggravated damages	2,000.00
Loss of business revenue	1,633.32
Moving expenses	107.91
Sound remediation product	33.59
Air conditioners, shower filter	192.18
TOTAL	\$15,577.00

The following is an outline of the key facts claimed by the tenant with excerpts from her written submissions:

1. The tenant had moved several times from other units because of noise. She told the landlord she had a home office and sought assurances the building was quiet. The landlord assured the tenant it was.
2. The tenant's primary noise complaint related to her immediately adjacent neighbours (“the neighbours”). The neighbours were a couple with a child.

They were loud, disturbed her every day, woke her early in the morning, and failed to stop the noise after warnings.

3. The disturbance started as soon as she moved in. It was “shocking noise daily throughout the day as well as at unreasonably early hours.”
4. The tenant informed CM, the building manager who attended the hearing, about the noise. CM did little or nothing to stop the noise which continued throughout the tenancy.
5. “My neighbours directly beside me make a persistent banging noise every morning before 8AM that continues repeatedly throughout the day. This noise wakes me up every morning because they are banging very loudly on their floor and the sound vibrates through the floor and to my bed which reaches my head and wakes me up even if I wear ear plugs. “
6. “Due to the constant noise, lack of proper sleep and stress of the situation my mental health has deteriorated and the constant anticipation or noise and inability to escape it has created a constant background anxiety within me.”
7. “Every morning I wake up upset and I do not feel like I can relax in my own home. This has also made me not want to be in room because the noise is relentless, and I cannot enjoy the space. [...] At least 2 weeks total of days I have not been able to work in my home office due to exhaustion from lack of sleep in the mornings.”
8. The tenant complained to the landlord in writing many times beginning November 15, 2022.
9. The tenant complained to the municipal noise by-law officer which was ineffective.

10. The tenant heard “fighting and yelling” from the neighbours and suspected family violence. She reported an incident to the police. This also was futile.
11. The tenant was unable to use her bedroom which shared a wall with the neighbour’s unit. She had to sleep in the living room.
12. The tenant is an “audio engineer” and works at times as a dee-jay. She owns audio monitoring equipment. She submitted tests which showed the frequent loud noise coming from the neighbours. One test showed the number of times the “blue waveform expands past the top red line into the extreme level of loudness. Very many times in one day. Based on the 5-minute sample of 20 bangs earlier, that would make 240 instances of noise per hour. If I narrow it down to even half of that at 120 that would give us approx.1320 instances of loud noise coming through my wall within that 11 hour period in one day.”
13. The tenancy ended March 31, 2023. The tenant moved out because she could not stand the noise from the adjacent apartment anymore. All her efforts to get the landlord to stop the noise were fruitless.
14. The landlord should reimburse her for all her rent. As well, the landlord kept possession of items for which she should be compensated.
15. The tenant lost business revenue as illustrated in submitted financial statements and the landlord should compensate her for her losses.
16. The tenant had to move because of the noise and the landlord should pay her moving expenses.
17. This situation calls for aggravated damages as regular damages cannot adequately compensate the tenant for her suffering, anxiety, and emotional trauma. The landlord’s actions were deliberate and negligent resulting in severe harm to the tenant.

Landlord's Evidence

The landlord rejected the tenant's claims and evidence. They testified as follows.

1. The building was built in the 1950's and is typical wood framed construction for that era. It is a multi family third floor walk up building. There are five apartments on the ground floor, nine on 2nd and 3rd. The tenant lived on the second floor.
2. The agent CM explained she has worked for the corporate landlord for 16 years and has been the building manager for 3.5 years. The building is a quiet building. This is the first noise complaint about the building to go to the RTB.
3. As soon as they received the first complaint, the agent CM met with the neighbours to discuss what could be done to reduce the noise.
 - a. The neighbours had a child. They removed certain toys. They started using slippers indoors.
 - b. The landlord installed a carpet to deaden noise.
 - c. The landlord "noise proofed" the neighbour's apartment as best they could:
 - i. they put sound proofing foam around doors, jams, cupboards in the bath and kitchen.
 - ii. they installed special mats at the front door.
 - iii. they installed sound blocker on the child's door.
 - d. The landlord began requiring workers to arrive in the building mid-morning.
4. The landlord did everything they could to resolve the issue. The tenant continued to send complaints.

5. The agent CM spoke with all occupants whose apartments shared a wall with the neighbour's apartment. Some worked from home. None of them had noise complaints about the neighbours.
6. The landlord denied they spread untrue stories about the tenant or gossiped about her as claimed. They simply sought information to help resolve the tenant's complaints.
7. The agent CM offered the tenant to come to the unit and "have a cup of coffee and listen to the neighbours". The tenant did not accept the offer and the landlord has never heard the noise about which the tenant complained.
8. The landlord learned the tenant is a dee-jay and sometimes works at night. They concluded she expected the building to be quiet when she is asleep in the morning.
9. The landlord had many problems with the tenant. For example, she smoked marijuana in the unit which caused damage and she grew it. The smoke was smelled in the neighbours' apartment and in the hallway.
10. The tenant began banging on wall yelling and swearing at the neighbours to stop the noise. Then she started banging on the ceiling to warn a different occupant upstairs about noise. She sometimes played music loudly with extreme bass which could be heard in the hallway and other apartments. Other occupants of the building began to complain about the tenant. The landlord submitted some of these letters of complaint.
11. The landlord submitted a copy of an email from the neighbour who described the abusive "hostile living environment" caused by the tenant. They described how joyful family moments, such as the child taking his first steps, were ruined by the tenant's wall banging and yelling. The tenant's pot smoking caused their apartment to smell. They believed the

loud music with excessive bass was in retaliation to their noise complaint about her.

12. After investigation, the landlord concluded the noise heard by the tenant were normal family sounds which were not excessive or unreasonable.
13. The landlord believes the tenant is a “serial attacker” of landlords and fabricates claims for financial reward.
14. The neighbours are good tenants and are still living in their apartment. There have been no noise complaints about them since the tenant moved out.
15. The items for which the tenant seeks compensation are in the landlord’s possession. The tenant abandoned them when she moved out. The items have always been available for her to pick up. The tenant may come and get them anytime.

Tenant’s Reply

The tenant denied the accuracy of the landlord’s version of events. She acknowledged she smoked marijuana on the balcony because “everyone did it”. She denied all other allegations of smoking or growing.

The tenant “called through the wall” to the neighbours when they were noisy and did not yell or swear. She did not bang on the ceiling. Sometimes she listened to music without headphones.

The landlord is minimizing and unfairly dismissing her valid complaints.

Analysis

Both parties provided a substantial amount of conflicting testimony during the lengthy hearing of 87 minutes. They each submitted considerable documentary evidence.

I have reviewed all evidence before me that met the requirements of the Act and the Rules of Procedure. Not all this evidence is referenced in my Decision. I refer to only the relevant, admissible and significant evidence in support of my conclusions and the facts as I find them.

Credibility

The landlord submitted convincing testimony from two representatives, one of whom is the building manager. They submitted many well-organized documents.

I find the landlord's submissions to be persuasive, credible, and forthright. The matter-of-fact testimony was supported in all material aspects by documentary evidence. I accept the landlord's evidence in its totality.

I find the tenant's version of events to be unreliable, self-serving and disingenuous. While the tenant claimed to be the victim of unreasonable noise, my understanding is that she was a perpetrator of serious disturbance to the neighbours and other occupants of the building. I do not believe the tenant's evidence which I find is exaggerated or contrived.

I find the landlord's version of events is the account which a practical and informed person would readily recognize as reasonable and reliable.

Therefore, I give the landlord's evidence the greatest weight. Where the parties' version of events differs, I prefer the landlord's version.

Four-Part Test

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine whether a party is entitled to compensation, there is a four-part test which must be met by the applicant based on the balance of probabilities, that is, something is more likely true than not. These tests are based on the above sections of the Act:

- (1) Was there a breach of the Act, the tenancy agreement, or the regulations by the respondent?
- (2) Did the applicant suffer a loss because of this breach?
- (3) Has the amount of the loss been proven?
- (4) Did the applicant do whatever was reasonable in minimizing their loss?

Each element of this test must be proven on a balance of probabilities. If one element of the test is not proven, then the remainder of the test need not be considered. The tenant bears the standard of proof on a balance of probabilities. In other words, what is more likely than not to have happened.

The tenant argued that the landlord failed to protect her right to quiet enjoyment. The failure amounted to a serious dereliction of the landlord's duty calling for aggravated damages. The tenant incurred the expenses as set out for which the landlord should compensate her.

Quiet Enjoyment

The tenant's claim for damages is for compensation for loss of quiet enjoyment.

Section 22 of the Act deals with the tenant's right to quiet enjoyment.

The *Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment* provides guidance in determination of claims for loss of quiet enjoyment.

The Guideline states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of quiet enjoyment is substantial interference with the ordinary and lawful enjoyment of the premises.

The Policy Guideline states that this includes situations in which the landlord has directly caused the interference, as well as situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these. The disturbance must be frequent and ongoing.

The Arbitrator is tasked with deciding the seriousness of the situation, the extent of the tenant's loss of use, the time of the interference, and the value of the loss to the tenancy.

Findings – Loss of Quiet Enjoyment

Considering the testimony and evidence, the Act, and pursuant to *Policy Guideline 6*, I find as follows.

The tenant has not met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment.

I do not find the tenant's evidence credible. I find the sound from the neighbour's apartment was normal sounds of family living in a building that is of that age and structure. I find the tenant created substantial disturbance by yelling, banging on

walls, playing loud music and smoking pot. The tenant 's behaviour demonstrates low tolerance, rudeness and unreasonableness to the neighbours.

I find the landlord took all reasonable steps to investigate the tenant's complaints. They conducted a thorough, professional enquiry and carried out all reasonable remediation steps to mitigate and lower the noise levels real or perceived. They met all lawful expectations and responsibilities.

The landlord properly investigated and concluded the tenant's complaints were groundless.

I find the tenant abandoned the items at the unit for which she claimed compensation. Her failure to take them with her or to retrieve them does not create a responsibility for the landlord to compensate her.

As the remainder of the tenant's claims for rent depend on a finding that she suffered a loss of quiet enjoyment and as I have found no such loss occurred, I dismiss all the tenant's claims, including for aggravated damages, without leave to reapply.

In summary, the tenant's application is dismissed in its entirety 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: May 12, 2023

Residential Tenancy Branch