



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT

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 in the amount of \$35,000 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

At the start of the hearing, the parties confirmed that each had received the other's documentary evidence.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$35,000;
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting July 1, 2013. Monthly rent is \$2,401.90 is payable on the first of each month. The tenant paid the landlord a security deposit of \$975, which the landlord continues to hold in trust for the tenant.

The rental unit is an apartment which is located in a multi-unit stratified apartment building. The landlord is an agent of the owner of the unit and does not have any ties to the strata corporation.

The tenant testified that she has been struggling with noise issues emanating from the unit located above hers (the Upper Unit) since 2017. She first reported these noise issues to the landlord in June of 2018, when the disturbances occurred daily. She testified she did not receive any response from the landlord until April 2019.

She testified that in June 2019 she learned that the Upper Unit's floors had been upgraded without the consent of the strata council. She attributes the disturbances to this unauthorized upgrade.

The landlord scheduled a meeting with the strata council to address this issue, but did not make a request first such a meeting until August 27, 2019. On October 1, the tenant and a representative of the landlord met with this strata council to ask it to take action against the owner of the Upper Unit and enforce the strata bylaws.

The strata council conducted an investigation and concluded that the owner of the upper unit had mats on the floor to dampen the sound and did not take any further action.

The tenant testified that the noise continued, and she made repeated complaints to the landlord. In May 2021, the landlord suggested that they take the matter to the Civil Resolution Tribunal (CRT). The landlord filed an application with the CRT in August 2021 against the strata corporation for an order that it enforce its bylaws and investigate the Upper Unit's flooring underlay and remove and replace it if necessary (the CRT Application).

On August 27, the CRT requested that the tenant, and not the landlord, become the sole applicant on the CRT Application. Following this date, the tenant had full charge of the CRT Application.

On August 18, 2022, the CRT issued a written decision and dismissed the CRT Application. The tribunal member found that the Upper Unit's floors did not breach the bylaws and did not find that the underlay is inappropriate or lacks any reasonable degree of noise-dampening.

The landlord argued that, with the dismissal of the CRT application, there was nothing further to be done about the noise emanating from the Upper Unit. The landlord does not manage the Upper Unit and has no authority to require its occupant to do anything.

The tenant argued that the Landlord unnecessarily delayed its response at multiple steps in this process, which caused her prejudice by exposing her to prolonged amount of disturbance. The Landlord argued it responded reasonably promptly, and many of the delays were for reasons outside of its control.

The tenant seeks \$35,000 in compensation for the loss of quiet enjoyment she has suffered as a result of the disturbances.

Analysis

Section 28 of the Act gives the tenant the right to be free from unreasonable disturbances. Residential Tenancy Branch (RTB) Policy Guideline 6 states that a landlord must ensure that the tenant's entitlement to quiet enjoyment is protected, which includes situations where the landlord was aware of an unreasonable disturbance but failed to take reasonable steps to correct it. A landlord can be held responsible for the actions of others aware of a problem and failed to take reasonable steps to correct it.

In the circumstances, I find that the landlord has exhausted all reasonable avenues available to it to address the tenant's noise complaints. The landlord does not have the authority to require the occupant of the Upper Unit to take any action. The strata corporation may have such authority. The landlord initiated to CRT Application to require the strata corporation to take action. The CRT Application failed. There is nothing more that the landlord can reasonably do in the circumstances.

I do not find that any delay in responding to the tenant's complaints, or in taking any steps against the strata counsel ought to result in compensation for the tenant. As the ultimate result of the landlord's actions did not result in the disturbances from stopping, I do not find that the delays prejudiced the tenant or caused her any additional loss.

The landlord has taken all reasonable steps to address the unreasonable disturbances. Unfortunately, these steps were unsuccessful in resolving the problem. I do not find that it has breached the Act. As such, per section 7 of the Act, the tenant is not entitled to any compensation.

Conclusion

I dismiss the tenant's application, in its entirety, 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 29, 2023

Residential Tenancy Branch