



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OLC, MNDCT, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on May 17, 2023, seeking the Landlord's compliance with the legislation/tenancy agreement. They also applied for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on September 8, 2023.

Both the Landlord and the Tenant attended the hearing, and I afforded each the opportunity to ask questions on the hearing procedure.

At the outset of the hearing, the Landlord confirmed they received the Notice of Dispute Resolution Proceeding and evidence that the Tenant presented in advance. On this assurance, I proceeded with the hearing as scheduled.

Preliminary Matter – amended issue

On the Tenant's Application, they provided the following:

I am applying for monetary order for damages and loss of quiet enjoyment as per the previous hearing file [number listed on this decision cover page].

A previous hearing was conducted in this matter on May 15, 2023 and the Arbitrator sent a decision to the Landlord and the Tenant on that same date. The Tenant's issue on that earlier Application was the same: the Landlord's compliance with the legislation/tenancy agreement. The Arbitrator found that the Landlord failed to respond to a persistent issue of cars idling in the parking area outside the Tenant's rental unit in a timely manner, as well as constant fire alarms.

The Tenant on that Application did not make a claim for damages in the form of compensation. The Arbitrator noted the Tenant “may apply for damages for loss of quiet enjoyment or such other order as circumstances warrant.”

This present Application is the Tenant’s follow-up claim for damages in the form of compensation. The Tenant on this Application again indicated they are seeking the Landlord’s compliance; however, in line with the Tenant’s statement on this Application, I amend it to make the issue that of compensation to the Tenant, as listed below. The authority for my amendment to the Application is s. 64(3)(c) of the *Act*.

Issues to be Decided

Is the Tenant entitled to compensation for monetary loss/other money owed, pursuant to s. 65 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant has rented an apartment from the Landlord since December 10, 2022. As of the date of this hearing, the tenancy is ongoing with the rent amount at \$1,552 per month. The owner hired a property manager that oversees the rental unit property. The Tenant lives with their young child.

In the prior May hearing, the Tenant brought forth the issue of ongoing alarm noise and exhaust pollution/noise from the parking area outside their rental unit.

In this present hearing, the Tenant described the fire alarm system that continued to sound loudly for an extended period of time. Ultimately this required repairs to the alarm system after the local fire authority investigated and advised the Landlord. The situation was rectified after weeks of ongoing noise in January and February 2023. The Tenant described the fire alarm “going all day and all night”, prompting the Tenant and other building residents to push a button that served to temporarily silence the alarm.

In the hearing, the Landlord’s agent who attended stated they could not recall knowing about the previous dispute resolution decision from May. The Tenant read verbatim from emails that

the fire authority sent to the Landlord about this issue that the Tenant provided as evidence in the May hearing.

The Landlord in this hearing confirmed they spoke to the fire authority just prior to this present hearing, and the fire authority advised that the issue of a faulty non-stop alarm was resolved some months prior. The fire authority conducted an inspection on August 15 and confirmed there was no ongoing issue with the alarm.

When I asked the Tenant for clarification, they confirmed the issue with the alarm was ongoing from January to mid-February. As an example of the frequency of the issue, the Tenant stated they were emailing the Landlord daily.

For this hearing, the Tenant submitted an image of their phone calls and email correspondence with the local municipality council (labelled as the "Mayor") regarding the issue, as well as the local fire authority (*i.e.*, the township's Assistant Fire Chief).

On the issue of noise/exhaust disturbance to the Tenant's own rental unit, the Tenant described their rental unit having a parking space right outside. A neighbouring resident from the same rental unit building would frequent their vehicle outside, parked in that space, leaving it to idle for quite some time.

The Tenant asked the Landlord for clear signage as a preventative measure. The Tenant started writing to the Landlord in regard to this issue on January 17. On January 18 the Landlord informed the Tenant that the problematic resident who was primarily responsible for this issue was being evicted. As related by the Tenant in this present hearing, the Landlord put up signage on March 1.

The Tenant made a prior Application to the Residential Tenancy Branch on January 20, 2023. On May 15. the prior Arbitrator found that the Landlord did not respond to the breaches of the Tenant's right to quiet enjoyment. That Arbitrator noted:

I accordingly order that the landlord take all reasonable steps to provide the tenant with quiet enjoyment of her unit under section 22.

I order the landlord install appropriate signage to stop vehicles from parking beside the tenant's unit or idling with lights on.

In this present Application, the Tenant provided a worksheet specifying their claim for two months full rent amounts, at \$1,552 for each month being January and February 2023.

The Tenant provided an image of more recent correspondence with the Landlord dated August 21, 2023. In this message the Landlord stated they could not find a reference to the previous May hearing in the Tenant's earlier Application.

The Tenant also provided a sample of their correspondence with their child's preschool teacher where the Tenant disclosed what was happening with their living arrangement that could be having a negative impact on their child's actions/attention/behaviour at preschool.

In this present hearing, the Landlord responded to say that they rectified the issues as required. With reference to some correspondence submitted by the Tenant here, the Landlord pointed out that the agent at the time made a statement of apology to the Tenant on these issues. As noted by the Tenant, the problematic other resident who appeared to be the source of idling vehicles had moved out, and the Landlord had appropriate signage in place. Additionally, the problem with the fire alarm was rectified and incidents did not reoccur.

Analysis

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. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the Applicant's claim is valid.

Generally, to be successful in a claim for compensation for damage or loss the Applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The *Act* s. 28 provides for a tenant's right to quiet enjoyment. This includes, but is not limited to, the right to freedom from unreasonable disturbances.

The *Residential Tenancy Branch Policy Guidelines*, in particular "6: Entitlement to Quiet Enjoyment" contains the following:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situation in which the landlord has directly caused the interference, and situations in which the landlord was aware of the interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In this situation where the fire alarm continued to ring, even requiring rental unit property residents to silence the alarm manually on a continual basis, I find the Landlord violated the Tenant's right to quiet enjoyment. The malfunctioning alarm, in and of itself, constitutes a substantial interference.

I find the violation of the Tenant's right to quiet enjoyment was compounded by the Tenant on their own having to contact fire authorities in attempting to resolve the issue. I find that in no way should this task for to a building resident. The Tenant also contacted the local municipal council's office in some attempt to rectify the issue. I find this points to the Landlord not taking the issue up in a timely manner. There should have been no reason for the Tenant to make the effort on their own time to contact outside agencies or authorities regarding a matter that was affecting all building residents to an abnormal degree.

By the time of the May 15th hearing, the issue was resolved; however, I find that was only through the effort of this Tenant in contacting authorities who followed up with the Landlord. Aside from the Tenant's efforts, I am not certain how the issue would have been resolved. I find this issue deserves fair compensation for the substantial interference to the Tenant's right to quiet enjoyment in the rental unit. I accept as fact that the Tenant was constantly messaging the Landlord about the issue: this was borne out by the Tenant detailed description in the hearing of one day arriving home at lunchtime and being forced to deal with the issue at that time.

In summary on the fire alarm issue, I find that a damage exists in the form of the Landlord's violation of the Tenant's right to quiet enjoyment.

Aside from the Tenant spending a substantial amount of their own time dealing with the fire alarm issue, I find the Tenant's guarantee of a good night's rest during this time was tenuous at best. This was due to the interruptions brought on by idling vehicles right outside the rental unit. I find there was no immediate solution available to the Tenant, and their concern was that there was no on-site property manager to deal with the situation. I find as fact that the Landlord was responsive to the Tenant in communicating what a solution to this particular

issue entailed; however, I find as fact it was quite some time before the Landlord had in place a more preventive measure that would notify anyone parking a vehicle outside that an idling vehicle, or other noise, would affect the indoor residents in the immediate area.

The Landlord did not attend the hearing in May to explain the situation to a sufficient degree. The Landlord in this present hearing noted that they undertook measures and apologized to the Tenant at the time; however, from one agent to the next the Landlord seemed unaware of the impact to the Tenant here and did not provide evidence to show how they addressed the issues.

To some degree the Landlord was working on ending the tenancy of a problematic resident who was the source of the vehicle noise/exhaust; however, to proactively guarantee residents' right to quiet enjoyment – especially in conjunction with a purposefully noisy mechanism like a fire alarm that was malfunctioning – the Landlord was not dealing with the overall situation. I find it was not an overly onerous task to have signage or other notices in place to all residents and their guests about vehicle noise, with some immediate measure in place. I find as fact that this situation continued from January 17 to March 1, as recounted by the Tenant in this hearing.

In sum, I find the Landlord breached the Tenant's right to quiet enjoyment, for a significant period of time, as recounted by the Tenant in this hearing. I find the Landlord did not present evidence or have some account in place to show their efforts at rectifying the situation. I conclude the Landlord was not proactive to a required degree in relation to both of these issues.

Based on my finding above, s. 65(1)(f) of the *Act* is authority for an order of rent reduction of future rent by an amount that is equivalent to a reduction in the value of a tenancy agreement, due to any failure by the Landlord to comply with the *Act* or the tenancy agreement:

Based on the testimony of the Tenant, I find that the value of the tenancy was reduced due to the Landlord's failure to guarantee the Tenant's right to quiet enjoyment. I find the value of the tenancy was fully reduced – that is, by 100% -- of the amount of monthly rent for that relevant time period.

I find the Tenant is entitled to a future rent reduction of \$1,552 for October 2023, and November 2023, the time period involved for these two incidents that ran concurrently for the time period of January through to February 2023. I find it inconceivable that the Landlord was not able to rectify either situation in a timely manner, leaving the Tenant to their own devices in that time. By not attending the initial hearing and having barely a grasp of the situation in the

second, I find the Landlord did not explain any extenuating circumstances that prevented them from attending to ensuring the Tenant's rights were not violated.

The Tenant was successful in this Application; therefore, I authorize the Tenant to deduct the amount of \$100 from their December 2023 rent payment to the Landlord, as reimbursement of the Application filing fee. This deduction is authorized by s. 72(2)(a) of the *Act*.

Conclusion

Pursuant to s. 65 and 72 of the *Act*, I order that the Tenant is entitled to be repaid a retroactive rent reduction in the amount of two months' rent in full, to be deducted from each of their October 2023 and November 2023 rent payments. In addition, the Tenant is entitled to reimbursement of the Application filing fee, to be deducted from their December 2023 rent.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 25, 2023

Residential Tenancy Branch