

## **DECISION**

### **Introduction**

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act). The Landlord's application for:

- a Monetary Order of \$4,050.00 for unpaid rent under section 67 of the Act
- a Monetary Order of \$257.50 for damage to the rental unit or common areas under sections 32 and 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

And the Tenant's application for:

- a Monetary Order of \$7,656.00 for monetary loss or money owed
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Those listed on the cover page of this decision attended the hearing and were affirmed.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

The original hearing began on October 28, 2024, and a decision was issued dated November 1, 2024, which should be read in conjunction with this decision. The decision dated November 1, 2024, was for the Landlord's application for dispute resolution.

I proceeded with the hearing on February 6, 2025, for the Tenant's application for dispute resolution.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package), Evidence and Preliminary Matters**

Service of required documents was addressed in the decision of November 1, 2024, as follows:

As both parties confirmed service of the Proceeding Packages and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

## **Issues to be decided**

Is the Tenant entitled to a Monetary Order of \$7,656.00 for monetary loss or money owed under the Act?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

## **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The following details were from the decision of November 1, 2024:

The rental unit was a basement suite in a house (the House). Both parties agreed that this tenancy began on September 1, 2023, and ended on August 15, 2024. The Tenancy Agreement (TA) was submitted in evidence. The fixed term tenancy ended on January 1, 2024, and thereafter the tenancy continued on a month-to-month basis until August 15, 2024. The monthly rent of \$2,700.00 was due on the first day of each month. The Tenant paid a security deposit in the amount of \$1,350.00.

The Tenant is seeking a monetary order of \$7,656.00 as follows:

Item 1 - \$2,750.00 (\$500.00 per month x 5.5 months), for loss of quiet enjoyment and unreasonable disturbance. The Tenant testified that in January 2024 other tenants (Upstairs Tenants) occupied the upstairs level of the House. The Upstairs Tenants consisted of a family with two adults and three children.

The Tenant testified that the Upstairs Tenants caused constant disturbances, which included constant running, jumping and the dragging of items and furniture across the floor. The Tenant testified that the noise disturbances were early morning, from 5:30 am to 7:00 am, or at times throughout the day, with other occurrences after 10:00 pm.

The Tenant testified that on January 25, 2024, they sent an audio recording to the Landlord and for them to rectify the issue. The Tenant testified that the Landlord agreed to address the issue, however, the noise disturbances continued.

The Tenant testified that on March 5, 2024, March 20, May 10 and July 22 they asked the Landlord to address the issue of noise disturbances. The Tenant referred to the messages submitted as part of their documentary evidence to show the Landlord

apologized, and stated they would address the matter by talking to the Upstairs Tenants.

The Tenant testified that the issue continued and was not resolved. On July 22, 2024, the Tenant sent an audio recording to the Landlord, which was submitted in evidence. The Landlord replied that the situation is unfortunate and they would speak to the Upstairs Tenants.

The Tenant testified that on July 25, 2024, they asked the Landlord to provide to them the contact information for the Upstairs Tenants, for them to directly resolve the issue.

The Tenant testified that on July 26, 2024, they sent additional audio recordings to the Landlord, to which the Landlord responded that they will attend the House to speak with the Upstairs Tenants.

The Tenant referred to photographs submitted in evidence to show garbage that was thrown from the upstairs balcony to their patio from May 12, 2024, to June 3, 2024. Additional photographs show toys and garbage thrown onto the Tenant's patio area. The Tenant also submitted video footage as part of their documentary evidence.

The Tenant is seeking compensation for five and a half months from February 2024 to August 15, 2024. The Tenant testified that they are not seeking compensation for noise disturbances for June 2024, as they did not experience any concerns as the Upstairs Tenants were on vacation.

Agent SS for the Landlord testified that the noise level was never beyond what is expected in a typical residential tenancy. SS stated that the upper level of the House was occupied by adults, along with their twin children and a teenage child. SS stated that there was a regular level of noise transfer of children playing and daily living activities.

SS acknowledged that they received messages from the Tenant, and stated that they took action and approached the Upstairs Tenants, who tried their best to resolve the issue to the liking of the Tenant. SS stated that with the permission of the Upstairs Tenants they provided their contact number to the Tenant, as requested by the Tenant and for them to directly resolve this issue.

Support Person NB for the Landlord testified that the House was newly built and had extra insulation and sufficient sound barriers.

SS referred to a text message submitted by the Tenant, when the Tenant stated that the noise did not bother them and they would like to sign a long term agreement to continue with the tenancy.

The Tenant stated that they made the above noted decision as the noise was not of concern at that time and they thought the issue was resolved.

Item 2 - \$1,950.00 for loss of quiet enjoyment, breach of right to reasonable privacy for six and a half months, from February 2024 to August 15, 2024. The Tenant testified that in June 2024 they learned that the Upstairs Tenants had access to the security camera installed at the exterior of the House. The Tenant testified that the Upstairs Tenants had visibility and recordings of their patio area, and their private activities. The Tenant testified that they learned of this access as the Upstairs Tenants informed them of a bear that was on the patio.

NB testified that when the Landlord built the House they installed three cameras, at the front of the House and one on each side of the House. NB stated that these cameras were there since the start of the tenancy, and the Landlord did not access them, or realize that they could gain access. NB testified that the Upstairs Tenants gained access without their knowledge. NB testified that the patio was a common area for use by all occupants of the House.

Item 3 - \$650.00 (\$100.00 per month x 6.5 months, from February 2024 to August 15, 2024), for loss of service, garbage collection. The Tenant testified that at the start of the tenancy they were provided with and given use of one set of outdoor garbage bins. The Tenant stated that once the Upstairs Tenants started their tenancy they requested a new set of garbage bins. The request was made on January 27, 2024. The Tenant testified that they waited for the Landlord to take action but they never did so. The Tenant testified that they did not buy garbage bins and instead had to collect garbage in the rental unit.

SS testified that the City provided one set of garbage bins for the House. SS testified that on one occasion the Tenant asked for another set of garbage bins, as there may have been an issue of extra garbage when the Upstairs Tenants first moved into the House. SS stated that the Tenant did not raise this issue again since January 2024.

Item 4 - \$575.00 (\$50.00 per month x 11.5 months, from September 2023 to August 15, 2024), for loss of service, faucet issue.

Item 5 - \$231.00, for reimbursement of the inspection related to Item 4.

The Tenant testified that since the start of the tenancy they noticed lack of pressure and water flow from the faucet. The Tenant stated that it was difficult and time consuming to wash dishes. The Tenant stated that on September 16, 2023, they raised the issue for the Landlord. The Landlord checked the faucet and did not call a professional plumber or contractor.

The Tenant testified that towards the end of July 2024, they relied on an expert for an inspection. The Tenant submitted an invoice dated August 20, 2024. The Tenant stated that they were informed of the water flow issue caused by a poorly designed and cheap faucet.

SS testified that they are uncertain as to why the Tenant relied on a plumber when they had planned to move out of the rental unit. SS stated the invoice is dated five days past the end of the tenancy date. NB testified that the House was newly built and the faucet was in good working condition, as reported by the new tenants of the House.

Item 6 - \$1,500.00, for punitive damage, threats and harassment. The Tenant stated that at the end of the tenancy the Landlord threatened to call their new Landlord and Tenant YK's employer. The Tenant referred to email communication from the Landlord to YK's HR Manager. The Tenant testified that the Landlord falsely proposed to discuss a common project. The Tenant stated that the Landlord also called their new landlord to obtain their new address.

SS testified that they first emailed the Tenant for collection of owed money, however, the Tenant failed to return their calls. SS stated that they relied on a lawyer to make any further calls with respect to a garnishing order. SS testified that they did not harass the Tenant.

## **Analysis**

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows:

### **Is the Tenant entitled to a Monetary Order of \$7,656.00 for monetary loss or money owed under the Act?**

#### Test for damages or loss

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party did whatever was reasonable to minimize their loss.

Where the claiming party has not met each of the four steps, the burden of proof has not been met and the claim fails.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 28 of the Act states a tenant is entitled to quiet enjoyment including, but not limited to, freedom from unreasonable disturbance. Residential Tenancy Branch (RTB) Policy Guideline 6 (PG 6) states:

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 situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an 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.

I find that the Tenant has failed to establish their claim for monetary loss or money owed under the Act as follows:

Item 1 - \$2,750.00, for loss of quiet enjoyment and unreasonable disturbance. I accept there were noise disturbances when the Upstairs Tenants first occupied the House as these disturbances could have resulted from the initial move in by the Upstairs Tenants.

Based on the evidence before me, the Tenant again reported concerns to the Landlord in March 2024, May and July. The Tenant did not report concerns during February 2024, April and June. In this case, I find the disturbances were not frequent and ongoing and if they were, I would expect the Tenant to report the same to the Landlord for them to take action.

Further, I find that when the Landlord was informed, they did take action by addressing the matter with the Upstairs Tenants. I accept the situation may have resolved in June 2024, and then escalated towards the end of the tenancy, at which time the Landlord was once again involved in the matter and shared contact information as requested by the Tenant. I find these actions were taken by the Landlord in an effort to resolve the issue.

In review of the video footage, I accept there were children's toys and drawings on the ground during that one incident, however, I find the evidence does not substantiate frequent and ongoing disturbance.

Further, in review of the audio recordings, although I accept a certain level of noise, I find the Tenant has not established their claim for a substantial interference with the ordinary and lawful enjoyment of the premises.

Item 2 - \$1,950.00 for loss of quiet enjoyment, breach of right to reasonable privacy for six and a half months, from February 2024 to August 15, 2024. In this case, I accept the Upstairs Tenants had access and video footage for the patio, however, I find their intent was not for purposes of invading the Tenant's privacy. Further, the only evidence before me is the single incident of the footage from June 2024, when the Upstairs Tenant

informed the Tenant of a bear for their protection. I find the Tenant's evidence does not support their claim for a breach of privacy.

Item 3 - \$650.00, for loss of service, garbage collection. In this case, I find the Tenant did not act reasonably to minimize the claimed loss as required by the Act. I accept the issue of extra garbage was present at the end of January 2024, at which time the Tenant informed the Landlord of their concern and requested additional bins. However, I find the Tenant had a duty to do whatever was reasonable to mitigate the loss. If the issue were ongoing, I would expect the Tenant to inform the Landlord of the same. The Tenant did not buy a new garbage bin, nor did they raise this issue again. I find the Tenant has not proven the amount or value of the loss, and they failed to act reasonably to minimize the claimed loss.

Item 4 - \$575.00, for loss of service, faucet issue.

Item 5 - \$231.00, for reimbursement of the inspection related to Item 4.

I find the Tenant did not do whatever was reasonable to mitigate the claimed loss as required by the Act. There is no evidence before me to support the issue was raised again for the Landlord, for the Landlord to rectify the issue. I decline to award Item 4 and Item 5, the latter the reimbursement of an inspection the Tenant decided to proceed with at the end of the tenancy.

Item 6 - \$1,500.00, for punitive damage, threats and harassment. In this case, I find there were allegations between the parties, and the Tenant did not provide sufficient evidence over and beyond the testimony of the Landlord to prove that damage or loss exists. Further, I find the Tenant claimed the amount of \$1,500.00, however, they provided no detailed calculation to prove the amount of or value of the loss as required by the Act.

For the above noted reasons, the Tenant's application for a monetary order for monetary loss or money owed under the Act is dismissed without leave to reapply.

### **Is the Tenant entitled to recover the filing fee for this application from the Landlord?**

As the Tenant was not successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

### **Conclusion**

The Tenant's application is dismissed 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 Act.

Dated: February 25, 2025

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Residential Tenancy Branch