



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant seeking a Monetary Order for money owed as a result of damage or loss under the *Act* for loss of quiet enjoyment and to recover the filing fee from the Landlord.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served by courier on August 26, 2010. The Landlord acknowledged service on August 27, 2010.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all other oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation under section 67 of the *Residential Tenancy Act* and to recover the filing fee?

Background and Evidence

This tenancy ended on July 31, 2010, with a monthly rent of \$920.00 payable on the first day of the month. I note that there is no written tenancy agreement.

Tenant's Relevant Testimony:

The Tenant testified that the tenancy began on June 1, 2010, but that the Landlord in this claim bought the rental unit during that month and assumed the tenancy from the original Landlord.

The Tenant testified that for the entire month of July he was subjected to constant construction noise, such as banging, cutting holes, grinding, sawing and other, at all

hours of the day and night. The Tenant further testified that the noise occurred well past midnight and disturbed his quiet enjoyment for the last month of his occupancy.

The Tenant testified that he spoke to the Landlord, but the noise continued uninterrupted, which has caused him to file a claim for \$460.00 for the loss of his quiet enjoyment.

Landlord's Evidence:

- Witness List
- Photos purporting to show the construction work done on Landlord's residence

Landlord's Relevant Testimony:

The Landlord testified, through an interpreter, that work began on June 24 and continued for only 10 days during a three week period, from 11:00 a.m. until 7:00 p.m. The Landlord testified that the noise was not extensive and acknowledged working after hours only on one occasion.

The Landlord testified that other than work on the washroom, which was right above the Tenant's washroom, the only work was painting and affixing crown moulding, which does not cause much noise. Upon inquiry the Landlord later on admitted that the floors were also being sanded, but by hand.

The Landlord's contractor testified that he only worked for 10 days during a three week period and that there was not much noise.

Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 28 deals with the Tenant's right to quiet enjoyment, in this case, freedom from unreasonable disturbance.

I favoured the Tenant's testimony given the Landlord's contradictory statements about the location of the work and although I am not convinced the noise lasted the entire

month, I find the Landlord failed to provide to the Tenant quiet enjoyment for at least a portion of the tenancy.

Residential Tenancy Branch policy suggests that a dispute resolution officer may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the Landlord.

In this case, I find the Tenant has not proved a specific amount of damages, but is entitled to an award of nominal damages. Therefore, I allow the Tenant **\$100.00** for the devaluation of the tenancy for the month of July and **\$25.00** for the return of the filing fee for the Application which reflects the partial success achieved. I find the Tenant has established a total monetary claim of **\$125.00**.

Pursuant to the policy guideline, I have provided the Tenant with a monetary order for \$125.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$125.00.

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: October 29, 2010.

Dispute Resolution Officer