



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This is the Tenant's application for a monetary order for compensation for damage or loss; for an order that the Landlords comply with the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony at the Hearing.

I am satisfied that the Landlord was served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act.

The Tenant agreed that the Landlords provided the Tenant with copies of their documentary evidence, with the exception of a copy of a tenancy agreement between the Landlord and the Tenant's neighbour.

The Landlords testified that they did not receive copies of the Tenant's documentary evidence. Most of the Tenant's documentary evidence consisted of copies of documents that were also enclosed in the Landlord's evidence package. I invited the Tenant to provide me with oral testimony with respect to the remainder of his evidence.

Issues to be Decided

- Is the Tenant entitled to compensation for loss of peaceful enjoyment?
- Is the Tenant entitled to an order that the Landlord comply with Section 28 of the Act?

Background and Evidence

This tenancy started on December 1, 2009. The rental unit is a four bedroom unit in a subsidized family housing building. Monthly rent is due the first day of each month, and is calculated on a formula based on the number of tenants and occupants and their income and assets. The Tenant paid a security deposit in the amount of \$540.00 on November 3, 2009. Monthly rent from December, 2009 to April, 2010 was \$502.00; from May to October, 2010 was \$557.00; and from October, 2010 to present is \$628.00.

The Tenant gave the following testimony:

The Tenant testified that since he moved in to the rental unit, his neighbours (the "Neighbours") have been disturbing him with sounds of loud bass from their stereo; dribbling a basketball up and down stairs and bouncing it against a wall; and loud yelling and bumping. He stated that the bass music sounds have not been a problem since April 2010, but the other noises stop for a few days or a week and then start up again. He stated that they dribble a basketball for 15 to 20 minutes at a time, during the daylight hours. Sometimes the Neighbours pound on the floor so loud at midnight that it wakes the Tenant up. This pounding sound is only brief, but the Tenant can not get back to sleep. The Tenant finds the noise so disturbing that he hardly stays at home.

The Tenant wrote to the Landlord on February 23, 2010, complaining of the noise. He wrote again on March 16, 2010 complaining about the disturbances and the effect they were having on him. The Tenant has not provided the Landlord with written notification of noise disturbances since March, 2010, but has made verbal complaints since then. The Tenant received a warning letter from the Landlord in July, 2010, stating that the Neighbours had complained about him. On September 2, 2010, the Tenant made a transfer request and was advised on September 24, 2010 that it was on denied.

The Tenant is angry that the Landlord is not addressing the problem. The Tenant has discussed the issue with the Neighbours, Landlord, by-law officer and the RCMP. He

believes he has taken every reasonable step to address the issue, but nothing has been done.

The Tenant typed out a “witness statement” for two of his other neighbours to sign, and provided it to his Landlord, but still nothing has been done. The Landlord is playing down the Tenant’s complaint.

The by-law officer offered to mediate between the Tenant and the Neighbour, but the Neighbour refused to participate.

The Tenant seeks compensation in the amount of \$300.00 per month for 10 months (January to October, 2010) for loss of peaceful enjoyment.

The Landlord gave the following testimony:

Potential tenants are advised when they apply that the rental property is family housing and that there are children living in the property who occasionally make noise. The Tenant’s Neighbours are a large family, with 2 teenage boys and a 3 year old child. The Neighbours have been living in the rental unit for more than 8 years and no one else has ever complained about noise.

When the Tenant complained about the loud music and basketball noise in March, 2010, the Landlord spoke to the Neighbours who agreed to not allow their children to dribble basketballs inside their home and to relocate their speakers. The Neighbours moved their speakers and the Tenant acknowledges that the loud bass is no longer a problem. The Landlord believes the sound of running up and downstairs could be taken as a basketball dribbling. These sounds happen during the day time and are normal noises. With respect to the brief sound the Tenant referred to in the middle of the night, the Landlord suggested that it could be the normal sound of a three year old waking and moving about.

The Landlord went to the Tenant's neighbours who signed the Tenant's witness statement. She wanted to get their statements in their own words. The Landlord provided copies of their statements in evidence.

The Tenant applied to be relocated, but did not provide the documents required in order to complete a transfer. This option is still available to him, but he will have to comply with the procedures and provide the required documents.

The Neighbour was happy to participate in mediation with the by-law officer. It was the Tenant who refused to participate.

The Landlord has received no written complaints from the Tenant since March, 2010. The Landlord has received no communication from the Tenant, either in writing or verbally, since he filed his application.

Analysis

This is the Tenant's application and therefore the onus is on the Tenant to establish his claim on the civil standard.

To prove a loss and have the Landlord pay for the loss requires the Tenant to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I have carefully considered the testimony of both parties and the documentary evidence provided, and find on the balance of probabilities that the noise referred to by the

Tenant is normal noise associated with a “family” building. The noise occurs primarily during the daylight hours, when the teenagers are not in school. One of the letters from the two other neighbours states, in part, “[the Tenant] asked me to enter his unit and listen to the noise coming from the neighbouring unit..... As I entered, I heard the noise by was not that loud as some one could be that upset as [the Tenant] was.” (reproduced as written). The other letter states, in part, “I went over to his house, it was quiet (no t.v. and no music) and I was able to hear music coming from [the Neighbour’s house]..... I feel if he had some noise in his home, the music may not have been so disturbing to him.”

I accept the Landlord’s testimony that she has received no complaints from other occupants with respect to the Neighbours.

The Tenant has provided insufficient evidence that the Landlord has not complied with Section 28 of the Act.

Therefore, the Tenant’s application is dismissed in its entirety.

Conclusion

The Tenant’s application is dismissed.

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: March 07, 2011.
