



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, FF, O

Introduction

This is the Tenant's application for compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

Both parties appeared and provided affirmed testimony.

This matter was convened on February 27, 2013, and was adjourned to April 10, 2013, in order to allow the Tenant to re-serve the Landlord with two flash drives. An Interim Decision was provided on March 6, 2013, which should be read in conjunction with this Decision.

At the reconvened Hearing on April 10, 2012, it was determined that the Landlord received the two flash drives, by mail, on March 5, 2013, and that she was able to view the contents. The allotted time for the Hearing ran out before the parties could complete their submissions and therefore, the matter was adjourned again to May 10, 2013.

Preliminary Matters

The Tenant's Application for Dispute Resolution indicates that she is seeking "other" relief; however, she did not provide sufficient details in her Application with respect to what other relief she is seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Tenant's application is dismissed.

Issues to be Decided

- Is the Tenant entitled to compensation for loss of quiet enjoyment of the rental unit?

Background and Evidence

The rental unit is one of four residential suites on the top floor of a 3 storey mixed purpose building, located on a busy avenue. The remainder of the building contains commercial offices, a restaurant and book store. The Tenant moved into the rental unit in June, 2012. The Landlord purchased the building from the Tenant's former landlord in September, 2012.

The Tenant moved out of the rental unit on February 28, 2013, pursuant to an agreement between the parties that was reached during the Hearing on February 27, 2013. Monthly rent was \$580.00, due on the first day of each month. The Tenant testified that she paid a security deposit in the amount of \$300.00 to her former landlord. The Landlord's agent submitted that the former landlord did not transfer the security deposit to the Landlord when the rental property was purchased.

The Tenant testified that she has not had peaceful enjoyment of the rental unit since she moved in, due to the other occupants' loud parties and unreasonable noise late into the night. She stated that she set up a small camera for two nights at the end of January, 2013, to record some of the noise. The recordings were provided in evidence on the flash drives. The Tenant stated that she told the Landlord about the loud parties in September, shortly after the Landlord purchased the building. The Tenant testified that the Landlord did not do anything to stop the other occupants from disturbing her. She stated that these disturbances included:

- Huge parties with 20 or 30 people present, late into the night;
- One of the occupants letting a crack-head into the rental property, who threatened to urinate into a bag and waved his penis at her;
- Loud music being played at all hours of the day and night;
- Loud noises in the common corridor, disturbing her sleep; and
- Verbal abuse and intimidation by the other occupants and their guests.

The Tenant testified that the Landlord inappropriately brought her family through the rental unit after she had purchased the building.

The Tenant stated that she tried to cooperate with the other occupants and attempted to reach an agreement with them with respect to acceptable noise levels, but that she finally gave up and called the police to keep the peace.

The Witness DP ("DP") is the building superintendant. DP gave affirmed testimony. DP stated that he didn't get any complaints from the Tenant until October, 2012. He stated that her first complaint was that the building was noisy and smoky. The Tenant's second complaint was about a noisy door, which he fixed. The Landlord also imposed a strict "no smoking" rule, to come into effect on February 1, 2013.

DP testified that he has also received complaints from other occupants about the Tenant, including:

- The Tenant videotaping them without their knowledge or consent;
- Eavesdropping on them;
- Being verbally abusive towards them;
- Turning her TV up very loudly; and
- Banging on their walls.

DP stated that each time he got complaints from the Tenant, or about the Tenant, he investigated and warned both parties about unreasonably disturbing others.

The Witness CJ ("CJ") is another occupant in the rental property. He moved into the rental property in April, 2012. CJ stated that he first found out that the Tenant was complaining about noise when DP came to talk to him. CJ stated that he tried to work it out with the Tenant by talking to her and listening for his stereo from her place. He stated that he agreed to keep the volume down, to close his door, and to place a towel under the door to muffle any sound.

CJ denied that there were any parties of the size the Tenant alleged. He stated that the largest party he attended was at another occupant's, where there were 7 or 8 people there, including him and the other occupant. CJ stated that most of the parties the Tenant alluded to were just a gathering of 3 or 4 people. He stated that it is easy to hear conversations in the common hallway because of the poor sound insulation. CJ stated that he can hear other occupants' music if he is standing in the hallway, but not if he is in his apartment with the door closed.

Analysis

The Tenant's documentary evidence breaks down her claim as follows:

Rent \$580.00 x 7 months	\$4,060.00
Security deposit	<u>\$300.00</u>
TOTAL claim	\$4,360.00

The Tenant did not specifically request return of the security deposit on her Application for Dispute Resolution and the Landlord's agent objected to amending her Application to include a request for return of the security deposit. Therefore, I declined to amend the Tenant's application. The Tenant is entitled to file another application with respect to the security deposit, which must be dealt with in accordance with the provisions of the Act.

This is the Tenant's claim for damage or loss under the Act and therefore the Tenant has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Landlord pay for the loss requires the Tenant to satisfy each of 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;
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.

In this case, the Tenant provided digital evidence on which she relies to demonstrate the validity of her noise complaint. Throughout the video the Tenant is heard whispering or speaking in low tones, describing the events she is videotaping. For the most part, she is standing in her doorway, with her door partially open, and the camera is focused on one of the other occupant's doorway. I watched the video a couple of times, and could not hear any noise that was remarkably louder than her hushed tones. Several times during the video, the Tenant remarks that she just missed the disturbance. I find that the Tenant's video evidence does not provide sufficient proof of the loss of peaceful enjoyment that she is claiming.

In her documentary evidence, the Tenant comments, "I have come to know the other tenants in the back and they tell me they are also fed up with the noise, traffic and insecurity of this building." The Landlord, DP and CJ all disputed the Tenant's claim. The Tenant did not call any witnesses to substantiate her claim, or any written statement from the other tenants referred to in her documentary evidence.

For the reasons provided above, I find that the Tenant failed to establish part one of the test for damages. Therefore, the Tenant's application for compensation is dismissed.

The Tenant has not been successful in her application, and I find that she is not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Tenant's application is dismissed. The Tenant is entitled to file an Application against the security deposit, which must be administered in accordance with the provisions of the Act.

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 21, 2013

Residential Tenancy Branch

