



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OLC, FFT, MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 24, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord comply with the Act;
- a monetary order for compensation; and
- an order granting the return of the filing fee.

The Tenant and the Landlord's Agent attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised relating to service, I find the above noted documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all 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

1. Is the Tenant entitled to an order that the Landlord comply with the regulations, tenancy agreement or the *Act*, pursuant to Section 62 of the *Act*?
2. Is the Tenant entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?

3. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on August 1, 2021. Currently, the Tenant pays rent to the Landlord in the amount of \$1,450.00 on the first day of each month. The Tenant paid a security deposit in the amount of \$750.00 which the Landlord continues to hold.

The Tenant stated that he has experienced noise from the occupants who live immediately above him as a result of their children running, jumping, and playing in the unit above. The Tenant stated that he works full time and attends University, therefore, when he returns home, he expects a quiet living accommodation free of disturbances. The Tenant stated that he has made efforts to discuss the issues with the occupants who reside above him directly, however, they have not been receptive to making changes.

The Tenant stated that he has brought his concerns to the Landlord, who the Tenant acknowledged has tried their best and has been helpful given the situation, however, the issues surrounding the noise are ongoing. As such, the Tenant is seeking monetary compensation in the amount of \$200.00 per month from August 2021 to April 2022 in the amount of \$1,800.00. The Tenant provided video recordings to demonstrate the noise that can be heard from his rental unit. The Tenant has also provided a copy of the complaint letters he sent to the Landlord dated December 6, 2021 and January 3, 2021.

The Landlord's Agent responded by stating that the Tenant has expressed concerns relating to the noise to the Landlord. The Landlord's Agent stated that she took action on several occasions and verbally discussed the noise issues with the occupants who live in the rental unit above the Tenant. The Landlord stated that this proved to be ineffective, which resulted in the Landlord issuing a written warning on January 19, 2022 to the occupants relating to the ongoing noise issues cautioning them that the tenancy would end if they continued to disturb the Tenant.

The Landlord's Agent stated that the Landlord served a One Month Notice to End Tenancy to the occupants on January 25, 2022 as a result of the ongoing noise issues. The Landlord's Agent stated that the occupants have since disputed the Notice. The Landlord's Agent stated that she is not in agreement with compensating the Tenant as it is a dispute between Tenants.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

Section 28 of the *Act* provides that a Tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. Residential Tenancy Policy Guideline 6 further discusses the right to quiet enjoyment and provides that:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of 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.

Residential Tenancy Policy Guideline 6 also sets out that;

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.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

In this case, I accept that the Tenant has experienced issues with the occupant who reside above him, as their children can be heard running, jumping and playing above. I find that the Tenant has provided insufficient evidence to demonstrate that the noise from the children above is frequent, ongoing, and unreasonable. Instead, I accept that the Tenant may hear the children in the unit above from time to time, which I accept can demonstrate a temporary discomfort or inconvenience.

I find that after the Tenant provided the Landlord with written complaints on December 6, 2021 and January 3, 2022, the Landlord took immediate and reasonable action to address the noise complaint by first discussing the issue verbally with the occupant who lives about the Tenant, which was followed by a written warning issued on January 19, 2022 and the subsequent Notice to End Tenancy served on January 25, 2022. I find that the Landlord addressed the Tenants concerns appropriately within a reasonable amount of time, therefore, I find that the Landlord did not breach the *Act*.

I find that the Tenant is not entitled to monetary compensation as I have found that the Landlord did not breach the *Act*, and that the Tenant did not provided sufficient evidence that there is a significant breach of their quiet enjoyment, nor did they mitigate their loss by only providing the Landlord with the written complaint relating to noise as early as December 6, 2021, which is over four months into the tenancy.

In light of the above, I dismiss the Tenant's Application in its entirety without leave to reapply. As the Tenant was not successful, I decline to award the Tenant with the filing fee.

Conclusion

The Tenant provided insufficient evidence to demonstrate that their quiet enjoyment had been breached, nor that the Landlord breached the Act. I further dismiss the Tenant's claim for monetary compensation 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 *Residential Tenancy Act*.

Dated: April 26, 2022

Residential Tenancy Branch