



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: ERP OLC RP

Introduction

- 1) This hearing dealt with three separate Applications for Dispute Resolution by the tenant seeking the following:
 - An Order compelling the Landlord to comply with the Act, Regulation or tenancy agreement;
 - An Order compelling the Landlord to make emergency repairs for health or safety reasons;
 - An Order compelling the Landlord to make repairs to the unit, site, property;

The three files contained the following details:

1. *"Bedbugs 4 yrs +. Landlord is negligent in acting to repair of site & property to rid of bedbugs. Allowing tenant not to spray endangering all other tenants."*
2. *"Right to Quiet Enjoyment – Drifting cigarette smoke & Marijuana smoke comes in my suite every day through my window & hall door and outlets in walls. All halls are full 24/7 with smoke. Smokers doors in halls are open to vent. Smoking in halls and outer game room ongoing for years."*
3. *"Unreasonable disturbed by noise level in my unit, harassment from tenants, BC Housing and _____ Police, call for sound level survey. I have a right to peace and quiet enjoyment too. What is too loud?"*

Preliminary matters

The hearing was held face-to-face at the tenant's request.

Prior to the hearing, the tenant had made various written requests including: that expert witnesses and certain records and documents be subpoenaed by the Dispute Resolution Officer, that a translator for a hearing-impaired witness be provided and that the Residential Tenancy Office provide a court reporter to create a transcript of the hearing.

None of these requests were granted based on the Act, Regulation and Rules of Procedure, including Rule 6 and Rule 7. Therefore, the hearing on the application proceeded based on related evidentiary submissions and the testimony of the parties.

At the commencement of the hearing both the landlord and the tenant had witnesses present to be called to testify at the appropriate juncture. However, a determination was made to proceed with the hearing and to require participation by witnesses only if the issue being discussed required their input and when or if the testimony was necessary and relevant to the subject at hand. After a brief preliminary discussion between the participants, some of the witnesses were advised that they need not wait to be called as it was determined that the supporting testimony they planned to give was not directly pertinent to the matter to be decided.

Issue(s) to be Decided

At this hearing, the issues to be determined, based on the testimony and the evidence are:

- Whether or not the Landlord was in noncompliance with the Act and should be ordered to comply with the Act.
- Whether or not there was sufficient cause to order the Landlord to complete repairs or address emergency repairs in regards to the unit

Background and Evidence

In regards to the tenant's concerns about how the landlord has been handling the problem of bedbugs, the tenant testified that, although his own suite had not been

infested, the landlord was not addressing the problem of pest-control in the most appropriate way in the tenant's opinion. The tenant testified that this exposed the tenant to an unacceptable level of risk. In particular the tenant had taken exception to the manner in which the landlord had dealt with other tenants in regards to mandatory spraying.

The landlord testified that it had a vested interest in eliminating the problem and had taken all comprehensive measures advised by qualified pest-control experts. The landlord provided information regarding what actions have been taken.

In regards to the tenant's complaint about smoke, the tenant testified that the landlord was not complying with the Act by failing to address the issue of exposure to smoke in the building. The Tenant submitted documentation into evidence regarding the health hazards of exposure to second-hand smoke and smoke exposure.

The landlord testified that it has imposed stringent policies regarding where residents may engage in smoking and how smoke exhaust must be managed in order to limit exposure to other residents. The landlord testified that it has consistently enforced these policies and has always intervened promptly taking whatever action is warranted when receiving a report that any tenant failed to follow the smoking policies. The landlord pointed out, however, that the building was not "smoke-free" and under their individual tenancy agreements, residents have the right to smoke in their suites.

In regards to the tenant's concerns about the loss of peaceful enjoyment due to noise, the tenant testified that his main concern was about vexatious and unjustified complaints from other residents about allegations that the tenant caused excessive noise. The tenant testified that he feels that he was being unjustly persecuted because the acceptable level of noise permitted was not defined. The tenant pointed out that other residents have generated noise yet were not sanctioned by the landlord. The tenant testified that he could clearly hear normal noises emanating from the suite above him including opening the sliding doors, dragging of chairs, the foldout bed being put

away and the radio or TV. The tenant reported that he could also hear his adjacent neighbour opening the bathroom door and closet door. The tenant testified that when he turned on his TV the occupant above him has banged on the floor to let him know that it was too loud. The tenant stated that it appeared he was being centered out and harassed. In fact some of the complainants about his noise were received from occupants who live in units that are not within the immediate proximity of the tenant's suite. The tenant conceded that he did not receive a Notice to End Tenancy, but had received warnings from the landlord about the volume level of his television and a visit from the police, which he felt was unfair and not warranted.

The landlord testified that it had an obligation under the Act to respond to tenant complaints in regards to noise and would not consider making the tenant aware of complaints about noise to be harassment. The landlord testified that complaints about noise are handled the same way for all. In fact, in past cases when other tenants had created excessive noise, the landlord had imposed sanctions, even issuing Notices to End Tenancy if necessary. The landlord stated that the fact that a tenant may hear normal sounds from other units would not be seen as interference with another tenant's peaceful enjoyment of their suite. The landlord acknowledged that the building was not completely sound proof. However, the landlord made it a practice to investigate and to intervene when the complaint about excessive or unreasonable noise was valid.

Analysis

Emergency Repairs

The tenant's application made a request for an order to compel the landlord to complete emergency repairs on the residential rental property.

Section **33** (1) of the Act defines emergency repairs as repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit,
- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

I note that the burden of proof was on the tenant to prove that 1) the landlord was not complying with the Act; 2) the situation qualified as an emergency and; 3) the situation justified an order forcing the landlord to complete repairs.

I find that the tenant has not met the tenant's burden of proof in this regard. I find that non-compliance with the Act on the part of the landlord has not been established by the applicant/tenant. Therefore, I find that this portion of the tenant's application must be dismissed.

Order to Make Repairs

In regards to the part of the tenant's application requesting an order to compel the landlord to make repairs, I note that section 32 (1) of the Act requires that a landlord must provide and maintain residential property in a state of decoration and repair that:

- (a) complies with the health, safety and housing standards required by law, and;
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. However, the burden of proof is on the tenant to show that

the landlord is not complying with the Act by failing to repair and maintain the premises. I find that the applicant/tenant has not succeeded in meeting the onus placed on the tenant to prove that the landlord neglected to meet the landlord's obligations under the Act in this regard. Therefore, I find that this portion of the tenant's application must be dismissed.

Order to Comply with the Act

Finally, in regards to the part of the tenant's application requesting an order to compel the landlord to comply with the Act, I find that the tenant was unable to identify any action or inaction of the landlord that could be considered to be in violation of the Act.

The issue of smoke in the hallways and elsewhere on the premises, while it may be a genuine problem for the tenant, was not proven to exist due to any negligence or contravention of the Act on the part of the landlord. In regards to the tenant's objections to the landlord's development and administration of its pest control policies, this is an operational matter that is entirely the landlord's purview to determine and the landlord is not required under the Act to have the tenant's input nor approval on how the landlord handles its business. I find that a complaint about an occurrence that has yet to transpire cannot be debated and is not contemplated under the Act.

The tenant's concern about being unfairly targeted for excessive noise may or may not have merit. However a written warning from the landlord could not be construed to be a violation of any section of the Act. I note that, should the matter progress to a Notice to End Tenancy, there is a statutory remedy available to the tenant and the tenant can make an application for dispute resolution on the matter at the appropriate time. I find that while all tenants are entitled to the peaceful enjoyment of their suites, the normal noises of daily living, given the age, character and location of the unit would not likely qualify meet the threshold of interfering with a tenant's peaceful enjoyment. On the other hand, unreasonably high volume or late night racket caused by a tenant could in many instances be considered as interference with quiet enjoyment. That being said,

this topic requires a subjective assessment. Neither the landlord nor a Dispute Resolution Officer can provide a universal measurement table of what level of sound would be unacceptable in any given circumstance. The most effective course of action is to endeavour to do one's best to ensure that every reasonable precaution is taken to avoid bothering others erring on the side of safety. The fact is that a landlord, upon receiving a complaint, must investigate the situation to determine whether there has been a contravention of the Act or agreement and try to resolve the problem. In fact, the landlord may well be in contravention of the Act by *not* issuing a warning to the tenant when complaints have been received about excessive noise.

Accordingly, I do not find that the landlord has violated the Act in any respect and I must dismiss the portion of the tenant's application relating to an order that the landlord comply with the Act.

Conclusion

Given the above and based on the evidence and testimony of the parties, I hereby dismiss the tenant's application in its entirety without leave to reapply.

Dated: December, 2008