



Dispute Resolution Services

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

Dispute Codes: OLC, FF

Introduction

This matter dealt with an application by the Tenant for an order that the Landlord comply with the Act. The Tenant also applied to recover her filing fee for this proceeding.

Background and Evidence

This one year fixed term tenancy started on June 1, 2008. The Tenant claims that ever since she moved in she has been disrupted on a daily basis by loud noises and partying from other tenants of the Landlord who live in the suite above her in the rental property. The Tenant said she has complained repeatedly to the Landlord about the noise, smell of marijuana and threats made by the upstairs tenants but the Landlord has done nothing. The Tenant says she has lost sleep which has interfered with her ability to work. The Tenant also says the smell of marijuana smoke bothers her because she has asthma. The Tenant also said the Landlord has advised her she could end the fixed term tenancy early if she wished.

The Landlord agreed that the Tenant has and continues to complain at least a couple of times a week about the noise from the upstairs tenants. The Landlord said she served the Tenants with a Notice to End Tenancy on September 9, 2008 in response to the Tenant's complaints, however, the owner of the rental property decided to withdraw the notice when the upstairs tenants said they would behave. The Landlord said she continues to speak to the upstairs tenants to ask them to be quiet but claimed there is little more she can do. The Landlord claimed that the rental property has been sold to a new owner who will take possession of it on February 17, 2009 and that she will cease to act as property manager at that time.

Analysis

Section 28 of the Act states that a Tenant has a right to quiet enjoyment which includes (among other things) the right to be free from unreasonable disturbance. It is the responsibility of a Landlord to ensure that one tenant does not interfere with another tenant's right to quiet enjoyment. If a tenant's right to quiet enjoyment is being

breached and a Landlord does not take reasonable steps to address it after being given notice of it, the affected tenant may apply for compensation against the Landlord for a loss of use and enjoyment of their rental unit. The Tenant did not apply for a compensation order in this matter. As a result, the Tenant's application is dismissed.

Conclusion

The Tenant's application is dismissed.