

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNDC, FF*

Introduction

This hearing dealt with an application by the tenant, for a monetary order for compensation and to recover the fee to file this application, pursuant to sections 67 and 72 of the *Residential Tenancy Act*. The tenant also applied for an order that the landlord comply with the *Act* pursuant to section 62.

On February 11, 2009, the tenant served the notice of hearing dated February 10, 2009 on the landlord, in person. Despite having been served the notice of hearing, the landlord did not attend the hearing. The tenant attended the face to face hearing and was given full opportunity to present evidence and make submissions.

The tenant did not pay the filing fee but applied to recover it. At the start of the hearing, the tenant agreed that she applied for the recovery of the filing fee in error and withdrew this portion of her application.

The tenant stated that due to noise disturbances at night caused by the adjoining neighbour, the tenant's sleep was disturbed on several occasions and therefore she missed work and suffered a loss of income. The tenant has applied for compensation in the amount of \$800.00 for loss of income from employment. During the hearing, the tenant stated that she did not "care" about her monetary claim and withdrew her claim for compensation.

Since the tenant withdrew her claim for the recovery of the filing fee and for compensation, the only issue requiring resolution is the application for an order that the landlord comply with the *Act*.

Issues to be decided

Was the landlord negligent in conducting his duties as a landlord? Did the landlord attend to the tenant's complaints in a timely manner? Should the landlord be ordered to comply with the *Act*?

Background and Evidence

The tenancy started on November 01, 1998 on a month to month basis. The rent is based on the tenant's income and is currently set at \$174.00 per month, due on the first of the month.

In May 2008, a new tenant (KM) moved into the adjoining unit. The tenant stated that KM is very noisy at night, resulting in sleepless nights for the tenant and subsequently a disruption in her daily routine. The tenant stated that the lack of sleep has caused her a great deal of stress and health problems and she has missed work a few times. In addition, KM smokes outside her rental unit and the smoke caused the tenant to have chest problems. The tenant filed a doctor's note confirming the above.

From September 30, 2008 to December 01, 2008 the tenant wrote five letters of complaint to the landlord regarding the noise and smoke coming from KM's rental unit. The tenant stated that the landlord spoke to KM upon receipt of the complaints and the noise would decrease temporarily.

On December 04, 2008, the tenant wrote to the landlord requesting to move to a different rental unit which was available for December. The tenant stated that landlord advised her that the move was not possible for the following reasons:

1. The tenant's son did not live with her full time.
2. The tenant had caused damage to her rental unit.

The tenant stated that above reasons are false, and she felt that the landlord was discriminating against her for racial reasons.

The landlord filed a letter dated February 02, 2009 which was a response to the tenant's request to move to a different rental unit. The letter stated that the manager met with both the tenant and KM in early December and since then, the tenant has not made any noise complaints.

The letter also stated that during an inspection of the rental unit, the landlord found that one bedroom was used for storage and posed a fire hazard. The letter also requested the tenant to provide proof that her son was living with her.

The landlord stated that since noise was no longer a concern and because the landlord was not confident that the tenant's son lived in the rental unit, the tenant's request for a transfer to a different unit was denied.

The tenant admitted that she has not provided the landlord with verification that her son lives with her.

Analysis

Under the Act, every tenancy agreement contains an implied covenant of quiet enjoyment. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes. The covenant of quiet enjoyment promises that the tenant shall enjoy the possession and use of the premises in peace, without disturbance and with reasonable privacy.

Frequent and ongoing interference if preventable by the landlord, may form the basis for a claim of a breach of quiet enjoyment. Such interference might include serious examples of unreasonable and ongoing noise, and allowing the property to fall into disrepair such that the tenant cannot safely continue to live there.

In order to prove an action for a breach of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord which has rendered the premises unfit for occupancy for the purposes for which they were leased.

A variation of that is inaction on the part of the landlord which permits or allows physical interference by an outside force which is within the landlord's power to control.

A landlord would not normally be held responsible for the actions of other tenants unless the landlord was notified that a problem exists, and failed to take reasonable steps to correct it. In the dispute before me, I find that the landlord spoke with the other occupant upon receipt of the tenant's complaints. The landlord promptly responded to the tenant's complaints and I therefore find that the landlord took reasonable steps to correct the problem.

I also find that the tenant did not provide the landlord with the documentation required to process the tenant's application for a transfer to a different unit. There is insufficient evidence that the landlord was discriminating against the tenant in the circumstances.

Conclusion

The tenant withdrew her claim for compensation and the filing fee. The tenant's application that the landlord be ordered to comply with the *Act* by providing the tenant with an alternative rental unit is dismissed.

Dated March 30, 2009.

Dispute Resolution Officer