



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

OLC, MNDC, & FF

Introduction

This hearing dealt with an application by the tenant seeking the equivalent of one month's rent in compensation due to loss of quiet enjoyment. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issue to be Determined

Has the tenant established a claim in damages due to the loss of quiet enjoyment due to the failure of the landlord to take reasonable steps to protect the tenant's right?

Background and Evidence

This tenancy began on January 1, 1989 and the rent is currently \$660.00 per month. The tenant is seeking damages for the sum of \$660.00 due to the loss of quiet enjoyment due to unreasonable and significant noise disturbance from the tenant's below her and because the landlord has failed to take reasonable steps to reduce the noise despite being told of the problem.

The tenant alleges that she has experienced problems since the new resident manager took over at the rental building and expressed the view that the new resident manager is too lenient with other tenants who are disturbing her.

The tenant began to experience problems with the lower tenant in the fall of 2008. At that time the tenant worked night shifts from 12:00 a.m. to 8:00 a.m. However, this work schedule changed as of January 18, 2009 to 4:00 p.m. to 12:00 a.m.

The tenant stated that she experiences problems with the lower tenant such as loud and excessive noise such as slamming doors, yelling or purposely making noise to upset her. She stated that the excessive noise has been ongoing for the last four months.

The tenant submitted several copies of e-mails she has written to the landlord respecting her position that there is excessive noise disturbing her. I have documented the e-mails as follows (as submitted):

Date of TT's e-mails	Description	LL response letters
November 17, 2008	The tenant (TT) questioning who is moving in as she	

	sleeps all day – TT expressing issue with Property Manager (PM) and indicating she will go to dispute resolution. TT making inappropriate comment about race of other occupants in building.	
December 4, 2008	TT alleging new occupant in lower unit has excessive number of people. TT making inappropriate comments about PM. TT acknowledging giving new tenants complaint letters of her own. TT complaining about smoking by other occupants on patio. Another inappropriate comment about the race of other occupants and about the PM failing to consider her sleeping schedule when finding new occupants. TT again threatening to go to dispute resolution.	LL response to TT indicating that several complaints have been made against her. Both the new occupants upset with TT and her complaints and allegations. Acknowledges TT works nights and that he has asked other occupants to respect that she sleeps during day. Suggests TT use earplugs or find another suite more suitable. LL warning TT that she is being harassing.
December 13, 2008	TT e-mails LL with spread sheet listing noise complaints since new occupants moved into December 13, 2008 and requesting LL correct the problems.	December 16, 2008 LL wrote TT that lower occupants also complaining about her, alleging she thumps the floor repeatedly. LL indicates that they are upset and scared and want to leave just for making normal living noise. Suggests that TT may want to find a more suitable place to reside.
December 17, 2008	TT complaining about excessive noise from occupants below. TT stating right to quiet enjoyment and any further noise she will file dispute resolution. Denies complaints from other occupants and threatens PM about making false accusations.	
January 31, 2009	TT complaint that she was awoken late at night by	February 3, 2009 LL responds that he spoke with

	lower occupants. Indicating they are walking around, slamming doors and banging walls on purpose to 'piss her off'.	lower occupants who state no noise made and that they are not doing anything to 'piss her off'.
March 19, 2009	TT complaint about lower occupants yelling around 10 p.m. and banging closet door.	LL responded that he spoke with other occupants and they deny making any noise. LL indicating that the rental property may not be the right place for the tenant. Follow up letter dated March 20, 2009 that LL followed up with other residents who stated that they have not heard any noise. LL indicates to TT that others would hear the noise as well if as extensive as she claims.

Despite only providing three written complaints about alleged noise disturbances to the landlord, it was the position of the tenant that she has suffered excessive and unreasonable noise over the last four months. The tenant also provided the landlord with additional pages listing the alleged disturbances by date and time.

The landlord states that he has attempted to work with and address the tenant's concerns; however, none of her complaints have been corroborated. He also stated that he has received complaints about this tenant and has had one occupant vacate due to her behaviour and actions. The landlord provided copies of complaint letters the tenant has given to the two new occupants when they began their tenancies. In both letters the tenant is immediately complaining about noise occurring in the adjacent apartments during the day.

The landlord provided a letter from the occupant who has vacated the building. This occupant states that he could not live with the restrictions placed upon him by the tenant and her wrongful accusations and allegations. This tenant clearly expressed the opinion that the tenant has harassed him.

The landlord stated that the tenant wants the building and other occupants to adjust and work around her lifestyle and makes unreasonable demands. The landlord stated that the tenant's claims are without merit.

Analysis

The covenant of quiet enjoyment grants a tenant the right to the exclusive possession and use of the rental unit without unreasonable disturbance. In making this claim the tenant must prove that there has been significant disturbance and also prove that the landlord has failed to take reasonable steps to prevent the disturbances.

I find that the tenant has failed to prove either ground. I am not satisfied that the tenant has suffered any disturbance that could be characterized as excessive or unreasonable. Even in consideration of the tenant's list of alleged disturbances, I find based on the evidence submitted that any noise the tenant heard was expected and reasonable noise expected from living in an apartment building. I accept the evidence of the landlord that no other occupant in the building overheard the level of noise the tenant has alleged.

I find that the tenant has been unreasonable and demanding since the day the two other occupants moved into the rental unit and that the tenant was contemplating filing for dispute resolution before there could be any chance for the other occupants to disturb her. This is reflected in her comments in the e-mail of November 17, 2008. I also find that the tenant unreasonably disturbed the new tenants by giving them the letters of November 27 and December 4, 2009 which demonstrate that she was demanding and unreasonable and clearly overstepping reasonable interaction with other occupants. It is the job of the landlord to issue letters and warnings and not the job of the tenant. I agree with the assessment of the landlord that the tenant wants all other occupants to adjust their lifestyles to accommodate her lifestyle. This is an unreasonable expectation. Based on this evidence I am satisfied that the tenant is the one who has significantly disturbed the quiet enjoyment of her neighbours and has caused one occupant to vacate the building as a result.

I also find that this application is largely vexatious and an attempt to personally attack the resident manager. It is clear from the tenant's own e-mails that in her opinion the resident manager is incompetent. The tenant repeatedly makes comments in her correspondence that the resident manager should be replaced. I find that may form part of the tenant's motivation in filing this application in an attempt to make the resident manager appear incompetent. The tenant has also made very inappropriate racial comments in her e-mails. Overall, I find the behaviour and actions of the tenant to be very disturbing.

I find that the landlord has addressed the complaints and concerns of the tenant in a calm and reasonable manner. He has asked other occupants to have regard for the tenant's work schedule and has investigated the tenant's complaints to determine whether they have any merit. I accept the opinion of the resident manager that all of the tenant's complaints have no grounds and they are not corroborated.

Conclusion

I dismiss the tenant's application as it has no merit.

Dated April 22, 2009.

Dispute Resolution Officer