



Dispute Resolution Services

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

Decision

Dispute Codes: MNDC, OLC, O, FF

Introduction

This hearing dealt with two applications: 1) from the tenant for a monetary order as compensation for damage or loss under the Act, an order against the landlord to comply with the Act, and recovery of the filing fee; 2) from the landlord in general to dispute the tenant's application, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either party has established entitlement to any of the above

Background and Evidence

Pursuant to a written residential tenancy agreement, the original term of tenancy was from December 1, 1998 to November 30, 1999. Thereafter, tenancy has continued on a month-to-month basis. Currently, rent in the amount of \$741.00 is payable on the first day of the month, and a security deposit of \$302.50 was collected on November 3, 1998.

The tenant states that her concerns arise from "loud impact and percussive noises" made by the neighbour(s) who live in unit # 408, which is located beside her in what is an apartment building. Documentary evidence submitted by the tenant is limited, and includes letters to the building owner / manager in care of her legal counsel (dated January 20, March 1, March 13 and April 14, 2009), in addition to respective replies from legal counsel in which he acknowledges receipt of the tenant's letters and confirms that the letters have been forwarded to the building owner. Further, the tenant

submitted into evidence copies of 2 letters of response from the building management dated January and April 6, 2009. The tenant provided no documentary evidence in support of her assertion that other residents in the building share her concerns about disturbances coming from other units in the building.

As for a monetary order, in addition to recovery of the filing fee, the tenant seeks compensation in the amount of \$2,400.00 (\$100.00 x 12 months) for an alleged breach of the right to quiet enjoyment.

The landlord's application includes copies of various letters of complaint about other tenants from the tenant / applicant which go as far back as December 16, 1999. Various, these letters describe concerns related to noise from "dragging furniture on bare concrete," "high pitched scraping noises," theft of the tenant / applicant's newspaper, "strange screams in the hallway," and so on. In her letters the tenant makes reference to disturbances emanating from a number of different units. While the landlord's agent states that no similar noise-related complaints have been received from other residents in the building, the landlord's application includes letters of complaint from other tenants about the conduct and behaviour of the tenant / applicant.

In a letter to the tenant dated April 6, 2009, the tenant is informed by building management in part, as follows:

Just letting you know this is the 9th letter in 8 years we have received from your neighbours [regarding] some very serious complaints, in particular banging on their doors and harassing them.

The landlord's agent stated that the current tenant in the unit located adjacent to the tenant / applicant's unit, has been a resident only since January 2008. Further, the landlord's agent confirmed that he has addressed the tenant / applicant's complaint about noise directly with the allegedly offending tenant.

Analysis

Section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment**, and provides as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline # 6 addresses **Right to Quiet Enjoyment** and provides, in part, as follows:

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form the basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of [among other things]:

- unreasonable and ongoing noise

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

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would

ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

During the hearing, the landlord's agent informed the tenant that she should bring any future complaints directly to his attention. It is understood that it would assist the landlord's agent to respond to these complaints if they are in writing and include very specific information about the nature of the disturbance, the apparent source of the disturbance, and the time when the disturbance occurred.

In the result, based on the documentary evidence and testimony of the parties, I find there is insufficient evidence of a breach of the right to quiet enjoyment. Accordingly, I dismiss the tenant's application for a monetary order and an order against the landlord to comply with the Act.

As both parties took a full opportunity during the hearing to exchange views on events surrounding the dispute, I dismiss their respective applications for recovery of the filing fee.

Conclusion

Pursuant to all of the above, I hereby dismiss the applications.

DATE: July 23, 2009

Dispute Resolution Officer