

DECISION AND REASONS

Dispute Codes: *MNDC, OLC, RR, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for loss under the *Act* and for the filing fee. The tenant also applied for an order seeking landlord's action to comply with the *Act* and to allow the tenant to reduce rent for loss of quiet enjoyment.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the tenant established a claim for compensation for loss of quiet enjoyment? Was the landlord negligent in responding to the tenant's complaints?

Background and Evidence

The tenancy started approximately 20 years ago. The tenant occupies unit #404 located in an apartment building. The tenant stated that for the last three years she has had to live with noise disturbances from the occupant of the adjacent unit #406. The tenant also complained about the former tenants of unit #401 and the current tenants of unit #408. The tenant admits that she wrote approximately 30 letters of complaint to the landlord since July 2008. The tenant has filed a copy of each of these letters.

The tenant stated that the main source of her loss of quiet enjoyment came from the tenant in unit #406 who makes noises that are consistent with the banging of pots and pans against the common wall. The tenant testified that it appears that this activity is not a part of every day living but is a deliberate act on the part of the tenant.

The landlord responded to the tenant's complaints, by notifying the occupants of the above mentioned units about the complaints against them. After receiving multiple complaints from the tenant against them and notifying them by sending them breach letters, the landlord issued eviction notices to the occupants of units #406 and #401. These occupants disputed the notices and both notices were set aside at hearings for dispute resolution.

The occupant of #406 responded to the landlord's breach letters. She states in one of her letters that on the night in question that she was "banging pots and pans"; she was actually sick in bed and did not use the kitchen. She also states that the tenant is harassing her with false allegations and has invaded her privacy to the point that she feels uncomfortable in her own home. She has also removed the vocal chords of her pet to avoid complaints of disturbances caused by barking.

The landlord has also filed a note written by the occupants of the unit that share a common wall with unit #406 on the other side. This letter states that they have never had any problems with noise disturbances from the occupant of #406.

The landlord stated that in addition to the frequent letters, the tenant has also called him with noise complaints as late as 10:00 p.m. and he investigated these complaints by physically going to the fourth floor and listening for noises. He stated that on one occasion, there were sounds coming from the kitchen of unit #406 which sounded like a dog pulling on a chain. The landlord notified the tenant to refrain from leaving her dog alone in the kitchen, for long periods of time. The landlord stated that he did not hear any noises at the other times that he investigated the complaints. The landlord could not recall the dates that he carried out these investigations.

The tenant argued that the landlord did not inform her that he had investigated her complaints and found no noise. She also argued that the landlord should have been able to remember the dates that he did so, if he actually did so. The landlord agreed to contact the tenant at the time that he investigates future complaints and to advise her of the outcome.

The landlord stated that he occupies the unit below the tenant and only hears noises which are consistent with living in an apartment. The landlord also stated that he has not received a single complaint from other occupants of the building, about noise disturbances or any other issues regarding the occupant of unit #406.

The tenant's witness testified that she visits the tenant approximately twice a year and stays overnight. She stated that in November of 2008, for the first time, she heard a loud noise from the next apartment that was consistent with the banging of the kitchen cabinet doors. She stated that it started as soon as they got home in the evening and it went on for approximately five to ten minutes. The witness stated that she did not recall

whether the noise disturbance re-occurred that evening. Since then, the witness has visited the tenant twice and heard the same sound for the same duration, once each evening.

The tenant stated that she received a threatening call from the father of the occupant of unit #406 and as a result she suffered a great deal of stress. The tenant is claiming compensation for loss of quiet enjoyment, the cost of faxing her letters of complaint to the landlord and for the filing fee.

The tenant is claiming compensation for the loss of quiet enjoyment for the following:

1.	Noise disturbances for the period of August 2006 to June 2008	\$500.00
2.	Noise disturbances for the period to July 2008 to August 2009	\$2,600.00
3.	Stress due to threatening call and lack of action on part of landlord	\$1,500.00

The tenant is also claiming the following:

4.	Cost to fax letters to the landlord	\$28.00
5.	Filing fee	\$50.00
	Total	\$4,678.00

Analysis

In order to prove an action for a breach of the covenant 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's actions that rendered the premises unfit for occupancy. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

Frequent and ongoing interference, if preventable by the landlord and he stands idly by while others engage in such a conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include unreasonable and ongoing noise disturbances.

Section 6 of the *Residential Tenancy Policy Guideline*, states that a landlord would normally be held responsible for the action of other tenants, if he was aware of a problem and failed to take reasonable steps to correct it.

In this case, the landlord responded to the tenant's complaints by notifying the concerned parties with breach letters. The landlord also issued eviction notices which were set aside at a dispute resolution hearing. The landlord stated that he has physically investigated the noise complaints at the time that they were made. Therefore, I find that the landlord took reasonable steps to address the tenant's complaints.

Based on the documentary evidence and sworn testimony of both parties, I find that the landlord responded to the complaints in a timely manner and made efforts to minimize disruption to the tenant. Accordingly, I find that the tenant has not proven her case for compensation for the loss of quiet enjoyment.

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the tenant's claim of \$28.00 for the cost of faxing letters to the landlord is dismissed. Since the tenant has not proven her case for compensation, she is not entitled to the filing fee of \$50.00.

Conclusion

The tenant's application is dismissed in its entirety.

Dated November 25, 2009.

Dispute Resolution Officer