

Decision

Dispute Codes: MNDC

Introduction

This hearing dealt with an application by the tenant for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement. Both parties participated in the hearing and gave affirmed testimony.

Issue to be decided

- Whether the tenant is entitled to the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on June 1, 2001. Currently, the tenant's portion of monthly rent is \$296.00. A security deposit was collected at the outset of tenancy, and the tenant recalls it was from approximately \$200.00 to \$225.00.

The tenant alleges that the resident who lives above her frequently uses a spray in his unit to address concerns about bugs. She claims that as a direct result of the spray, she experiences a range of miscellaneous physical symptoms which diminish her quality of life.

Further, the tenant alleges that the resident above her makes noises in his unit at all hours, and that these disturbances infringe on her quiet enjoyment of the unit. The tenant claims that the principal source of noise is the resident's use of weights.

The landlord stated that the building was constructed in 1973 and that it has recently undergone some renovations. The landlord testified that there is no hazardous material which forms any part of the building's construction. Further, the landlord states that bedbugs previously discovered in the building have been eradicated by way of the

services of a professional pest control agent. The landlord also reports that routine inspections of the building are undertaken by the pest control agent. Additionally, the landlord states that the resident in question has denied regular use of pest control sprays within his unit, and inspections of his unit have failed to bring to light any evidence of his use of such sprays.

As for noises from the unit above the tenant's, the landlord takes the position that some of these are the result of normal activities of daily living, and that all tenants are subject to such noises from neighboring units. The landlord also states that a number of residents have described noises in their units, the source of which appears to be pipes in the building (plumbing / heating).

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute, and the landlord undertook to take further steps in response to the tenant's concerns.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**, 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.

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, it was agreed as follows:

- that the landlord will formally notify residents in the building that the most effective means for pest control is provided by the professional pest control agents;
- that the landlord will formally notify residents in the building that residents' self-directed use of sprays within their units for the purpose of pest control *may* pose a health risk to them, and *may* disturb the comfort of other residents;
- that while renovations in the tenant's unit have been completed, the landlord will arrange for an inspection of her unit to ensure that all sealing in the unit has been thoroughly completed; sealing is intended to help prevent the entry into the tenant's unit of bugs & odors from all other adjacent units;
- that the landlord will formally notify / remind all residents of the importance of mutual courtesy and respect for neighbors where it concerns noise, particularly during certain hours (hours to be specified);
- that the landlord will persist in the investigation of noises thought to be related to pipes (plumbing / heating) in the building, and follow up with any remedies that are judged to be appropriate;
- that upon the tenant's request, the landlord will offer assistance in making an appropriate referral for the purpose of finding suitable alternate accommodation.

Based on the documentary evidence and testimony of the parties, I find there is insufficient evidence of a breach of the tenant's right to quiet enjoyment arising from the other resident's conduct, which is sufficient to entitle the tenant to a monetary order as compensation.

Conclusion

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

DATE: April 16, 2010

Dispute Resolution Officer