

DECISION

Dispute Codes O

Introduction

This hearing was originally scheduled for February 9, 2010 to hear the tenant's application for dispute resolution with respect to harassment from another occupant of the residential property. On February 9, 2010 both parties appeared at the hearing and the tenant requested an adjournment on the basis that this matter was also going before the Human Rights Tribunal. The hearing was reconvened for April 8, 2010. On April 8, 2010 both parties appeared at the reconvened hearing and indicated that the Human Rights Tribunal action had not yet been scheduled for hearing and both parties indicated that they wished to proceed with this application.

The tenant submitted late evidence that the landlord acknowledged receiving and I allowed the submission of the late evidence.

As a procedural note, the tenant's representative had to be cautioned several times throughout the hearing about inappropriate comments including innuendo and inflammatory statements as well as asking questions I determined irrelevant to the application before me.

Issues(s) to be Decided

1. Has the tenant established that she was or is being harassed or otherwise disturbed by another occupant of the residential property?
2. Can the parties agree on action that should be taken by the landlord with respect to the alleged harassment or disturbance?
3. Is it necessary to impose Orders upon the landlord with respect to compliance with the provisions of the Act, regulations or tenancy agreement?

Background and Evidence

I heard undisputed evidence that the month to month tenancy commenced June 15, 2008 and that the tenant occupies a rental unit located on the 1st floor of the building and that her unit is adjacent to a storage room used by occupants of the residential property to store possessions, including bicycles. The front door of the building is also located on the 1st floor and occupants and guests enter the building using the front door located on the 1st floor. The landlord and the caretaker do not reside at the residential property.

The tenant testified that an occupant (the occupant) of the rental unit located directly above the tenant's rental unit (the upstairs unit) frequently uses the storage room to repair bicycles and is running a bicycle repair business from the residential property. The tenant explained that the occupant's activities result in 6 to 10 bicycles being repaired by the occupant at any given time, extension cords running into the storage room and the storage room door being left open with frequent coming and going into the storage room. Due to the proximity of the storage room and the tenant's unit, and the older wood frame construction of the building, the occupant's activity causes excessive noise to be heard within the rental unit. The tenant also testified that the occupant has followed her home from the bus stop and has peered into the peep hole in her door.

The tenant testified that on December 19, 2009 the occupant was banging loudly on the tenant's door and the tenant called the police. The tenant left a voice mail for the landlord advising the landlord of what happened. The landlord did not respond to the tenant's phone call; however, the tenant alleged that the caretaker subsequently verbally communicated to the tenant that her tenancy would be ended if she could not get along with the occupants living above her.

The tenant's representative submitted that the occupant is a de facto manager of the property. As evidence of this submission, the tenant claims that when she viewed the rental unit with the caretaker, the tenant of the upstairs unit accompanied the caretaker

and answered many of the tenant's questions about the residential property and rental unit. In addition, an advertisement for a vacant rental unit provided a contact telephone number that is the telephone number listed for the occupants living in the upstairs unit.

The tenant's representative requested that the occupant be required to cease bicycle repair operations, that the occupant be banned from the 1st floor of the residential property, that access to the storage room be restricted to daytime hours, and that boundaries be set upon the occupant so as to cease inappropriate conduct such as peering into the tenant's peep hole.

The landlord testified that the female tenant residing in the upstairs rental unit has been residing in the building for more than 20 years and that a male occupant resides with the female tenant in that unit. The landlord claims he is not aware that the occupant is operating a bicycle repair business from the storage room and has not received complaints from other residents of such. Upon enquiry, the landlord stated he did object to residents storing their bicycles in the storage unit or making occasional repairs to their bicycles on the property. The landlord acknowledged receiving a message from the tenant on December 19, 2010 and did not respond to the tenant as the landlord was of the belief the police had dealt with the matter. The landlord claims to not know why the phone number of the upstairs tenant was used in an advertisement for an available rental unit but explained it was not authorized by the landlord. The landlord was unaware of that the upstairs tenant was present when the tenant viewed the rental unit and could not provide an explanation for this except that the upstairs tenant and occupant often offer to assist with tasks around the building.

The landlord testified that after the police were called on December 19, 2009 the occupant of the upstairs unit has been complaining that excessive noise is coming from the tenant's unit, especially when the tenant's representative is visiting the rental unit.

Upon enquiry, the landlord acknowledged that he could not recall the last time the landlord was in the storage room. However, the landlord was of the position that the

occupant could not be banned from the 1st floor as the 1st floor is the means of accessing the building and the occupant has the same right to access the common property as other residents. The landlord expressed that he would issue letter to the tenants of both the upper unit and the rental unit with respect to acceptable conduct and behaviour. The landlord expressed that it would be an inconvenience to all the other occupants of the building to limit access of the storage room to only daytime hours.

Included in the tenant's evidence is: a copy of a Human Rights Tribunal complaint filed by the tenant on January 4, 2010 and the tenant's written submission filed with the application for dispute resolution. Subsequently, the tenant provided copies of a letter issued by the tenant's representative to the landlord on January 6 and 7, 2010, an invoice for a hotel room for January 8 and 9, 2010, an advertisement for an available rental unit in the building printed on January 7, 2010; and other correspondence between the landlord and tenant in March and April 2010.

Analysis

Under section 28 of the Act, a tenant is entitled to quiet enjoyment, including reasonable privacy, freedom from unreasonable disturbance and use of common areas for reasonable and lawful purposes, free from significant interference. A breach of quiet enjoyment by the landlord may be found where the landlord sits idly by while other interfere with the tenant's quiet enjoyment on a frequent or ongoing basis. A breach of quiet enjoyment may also be found where a landlord, or its agent, persecutes or intimidates a tenant. Threats of eviction could be seen as intimidation.

In an attempt to defuse the tenant's anxiety about her tenancy ending, the parties were informed during the hearing that a tenant cannot be evicted without the issuance of a Notice to End Tenancy being served and that even if the landlord issues a Notice to End Tenancy, the tenant has the right to dispute the Notice. I informed the parties that verbal statements threatening eviction are not appropriate or effective.

The landlord had asserted that complaints have been received about noise coming from the tenant's rental unit; however, noise allegedly generated by the tenant or the tenant's guest is not relevant to the matter before me and I make no finding with respect to allegations the tenant is disturbing others. Rather, it is upon the landlord to investigate the complaints received from others and take sufficiently action where necessary.

Upon review of the evidence before me, I do not find sufficient evidence that the tenant contacted the landlord, in writing, to inform the landlord of being harassed or disturbed prior to making this application for dispute resolution. Rather, all of the written communication to the landlord was written after the tenant initiated this application. I also do not find sufficient evidence that the landlord knew or ought to have known of frequent of ongoing disturbance of the tenant prior to receiving this application. I do not find it unreasonable that the landlord was of the belief the police had resolved the disturbance that occurred on December 19, 2009. Therefore, I do not find sufficient evidence that the landlord had sat idly by and permitted others to interfere or disturb the tenant's right to quiet enjoyment at the time this application was made.

Although the tenant did not provide evidence of the number of bicycles in the storage room or the frequency of activity taking place in the storage room other than her own verbal testimony, I find the landlord's infrequent visits to the residential property, and in particular the storage room, a reasonable basis to conclude the tenant's description of the activities taking place in the storage room to be more likely. Further, I did not find a reason to disbelieve the tenant's testimony. Therefore, I find it reasonably likely that there is frequent activity in the storage room by the occupant of the upstairs unit and that this activity causes frequent and ongoing noise to be heard in the rental unit. Therefore, I find that it is the landlord's obligation to duly investigate the tenant's complaints of such disturbance.

Having heard undisputed testimony that the upstairs tenant and the caretaker have shown units to prospective tenants together and the upstairs tenant's phone number appeared in an advertisement for an available rental unit, I am also satisfied that it is

reasonably likely that the caretaker may not provide an objective and unbiased report of activities in the residential property where the upstairs tenant and occupant are concerned. Therefore, the landlord is advised that an investigation of the tenant's complaints should include observations independent of the caretaker's submissions.

If the landlord determines preventable behaviour or activity is taking place by a tenant or occupant that is disturbing to another tenant, it is the landlord's responsibility to take action to have such behaviour or activity cease. The parties are informed that the landlord's failure to protect a tenant's right to quiet enjoyment may be grounds to award compensation to a tenant upon application.

By way of this decision, the landlord is informed that the tenant has reasonable grounds to assert that her quiet enjoyment is being disturbed and I ORDER the landlord to duly investigate these concerns and take appropriate action to ensure the tenant's right to quiet enjoyment is protected.

Should the landlord fail to take sufficient action, the tenant is at liberty to make a subsequent application for dispute resolution to seek compensation from the landlord.

Conclusion

At the time this application was made, I do not find the landlord responsible for breaching the tenant's quiet enjoyment; however, I do find the tenant has reasonable grounds to assert her quiet enjoyment is being disturbed by another occupant. Accordingly, the landlord has been ORDERED to duly investigate the tenant's complaints and take sufficient action to ensure the tenant's right to quiet enjoyment is protected. Failure to take comply with this Order may entitle the tenant to compensation to the tenant upon application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 28, 2010.

Dispute Resolution Officer