

DECISION

Dispute Codes OLC

Introduction

This matter dealt with an application by the Tenant for an Order that the Landlord comply with the Act. In the Details of Dispute portion of her application, the Tenant claimed that she was seeking an Order that the Landlord investigate her complaints about noise in the rental property. At the hearing of this matter the Tenant said that she also wanted an Order requiring the Landlord to move her to another rental unit or put her on a priority list for other housing and for an Order that the Landlord revoke two warning letters she received about making repeated, unwarranted noise complaints.

There is no requirement under the Act or tenancy agreement that a Landlord provide a tenant with other living accommodations. In this case, the Landlord has an agreement with the B.C. Management Housing Commission to operate the residential property as subsidized housing. Section 2 of the Regulations to the Act states that provisions of the Act relating to rent increases do not apply if rent is based on the Tenant's income. Consequently, it is arguable whether the director would even have jurisdiction to order the Landlord to provide the Tenant with different accommodations if the end result was to interfere with the Landlord's ability to assign available housing that corresponded with the Tenant's income.

Furthermore, in seeking to have the Landlord revoke 2 warning letters, the Tenant is essentially seeking a determination as to whether the Landlord would have grounds to end the tenancy before the Landlord has sought to do so and for that reason, I find that her application is premature. Given that the Landlord has not had any notice of the latter two Orders sought by the Tenant, I find that it would be inappropriate to deal with them at this time and they are dismissed with leave to reapply for that reason.

Issues(s) to be Decided

1. Is an Order necessary to make the Landlord comply with the Act to deal with the Tenant's noise complaints?

Background and Evidence

This tenancy started on January 1, 2008. The Tenant claimed that she made a number of complaints to the Landlord over the course of the tenancy but that the Landlord has failed to adequately address them. The Tenant admitted that at first she thought the tenant in the rental unit above her (#30) was making noise. The Tenant said the Landlord told her that she had to deal with it and that if the noise level was unreasonable she should call the police. The Tenant said she called the police many

times and as a result, she was given a warning letter advising her that any further complaints could result in her tenancy being ended. The Tenant said she started speaking to the Tenant in unit #30 and discovered that it might have been the tenant in next unit (#31) making the noise instead. The Tenant also claimed that since she filed her application, she has been repeatedly disturbed by the noise from the television of the tenants in an adjoining unit (#10). The Tenant said she has spoken to these tenants but they have failed or refused to turn their television down or to move it. The Tenant admitted that she has not advised the Landlord of this noise complaint.

The Landlord provided documentary evidence showing that the Tenant has made many, many complaints about noise which the Landlord said has investigated thoroughly but which were unfounded. The Landlord said nothing has resulted from these investigations because no other tenants residing near the rental unit heard the noises complained of by the tenant and denied making them. The Landlord said the matter has also been difficult to resolve because the Tenant has not been clear about where the source of the noise is coming from. The Landlord admitted that it is her policy that tenants work out problems including noise issues among themselves first before involving the Landlord. The Landlord also admitted that she has not spoken with the tenant in unit #31 to determine if that tenant might be the source of the alleged noises.

Analysis

Section 28 of the Act says (in part) that a tenant has a right to quiet enjoyment including, but not limited to freedom from **unreasonable disturbance**. What is an unreasonable disturbance or noise level will vary depending on each tenant's living accommodations. In any event, the Act is clear that it is the responsibility of the Landlord to ensure that the Tenant is not unreasonably disturbed by noises of other tenants – it is not the responsibility of the Tenant.

I find that there is insufficient evidence that the Landlord has failed to investigate the Tenant's noise complaints. The Landlord agreed to talk to the tenants in units #10 and #31 to determine if they are playing loud music or playing their televisions late at night and if so, to request that those tenants keep the volume down. In the circumstances, I find that an Order requiring the Landlord to investigate is unnecessary.

Conclusion

The Tenant's application is dismissed on the above-noted terms. 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 22, 2010.

Dispute Resolution Officer