

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent. Both parties had arranged for witnesses to provide testimony but none of the witnesses were called by the end of the hearing.

At the start of the hearing the tenant requested that I confirm that her evidence package submitted contained a page 10 contrary to the landlord's claim that she did not receive a page 10. I reviewed my evidence package and found that I had not received a page 10.

I informed the tenant of such, and noted that as this was her summary of events she could provide any information it contained via her verbal testimony.

In addition, the tenant's application had listed the landlord's agent as the landlord, as such I amend the tenant's application to be in the name of the landlord and remove the landlord's agent's name from the application.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order to have the landlord comply with the *Act*, regulation or tenancy agreement, pursuant to sections 28 of the *Act*.

Background and Evidence

The tenancy began in May 2007 as a 1 year fixed term tenancy that converted to a month to month tenancy for a current monthly rent of \$1095.00 due on the 1st of the month, a security deposit of \$550.00 was paid. This tenant had resided in another unit in the residential property prior to the start of this tenancy.

The tenant testified that since the tenants above her have moved in she has not been able to enjoy the quiet the use of her rental unit. She testified that although the problems began in 2007 she did not lodge a complaint to the landlord until 2008. Until that time she states that she had tried to work this out with the tenants above her.

The tenant noted that she had sent complaints to the landlord's agent over the last two years and the landlord has failed to rectify the problem and she states that now the

landlord is accusing her of making excessive noise because the tenant upstairs and next door are making up complaints to get back at her.

The landlord's agent contends the tenant has lodged complaints but to this date the agent has been unable to confirm that the noise problems are related to anything more than noises one would expect of a wood frame construction complex where one unit is over top of another one.

The agent testified that she has continually requested the tenant let her know when disturbances are occurring so that she might be able to come over and hear the disturbances first hand. The agent stated the tenant has never contacted her to set this up.

In the tenant's written summary of events she states that she never had this problem when she lived in the other unit in the complex. The other unit was a townhouse with no other tenants above her but she does indicate that one neighbour had a son who practiced Irish dancing daily and that she did not lodge a complaint the entire time they were neighbours because the father was considerate enough to advise her of his son's activities ahead of time.

The landlord's agent pointed out inconsistencies in the tenant's evidence in that one of the letters written by the tenant to the landlord submitted by the tenant has been altered from the copy of the same letter submitted by the landlord. The tenant provided no explanation of the discrepancy.

The tenant described the noises as daily and somewhat intermittent but that they can sometimes be non-stop and consist of thumping sounding like someone is falling or jumping up and down or that someone is being forced against a wall. She indicated that noises were an ongoing annoyance but not disruptive to conversation.

The landlord testified that they have offered the tenant an opportunity to move to another, top floor, unit. The landlord's written submission states that she had offered the tenant five different opportunities but the tenant testified the landlord only made this offer once.

The tenant suggested, in the hearing, the only resolution that she sees a practical is that the landlord must end the tenancy of the tenants in the upstairs unit or to move the upstairs tenant to another unit.

The tenant contends that her eldest daughter had to move out of the rental unit to live with her father because of the noise problem; that her health problems are being directly impacted by these disturbances; and suggests that the tenants above her are trying to get her to leave because they want to move into her unit.

Analysis

In an application to have a party comply with the *Act*, the burden of proof is on the applicant to establish the other party party is in breach of the *Act*. From the testimony and documentary evidence provided, in this case, the tenant must provide sufficient evidence to establish the landlord has failed to comply with Section 28 of the *Act* to provide the tenant with freedom from unreasonable disturbance.

From the tenant's testimony and evidence I find the tenant has failed to establish that the noises from the upstairs tenants constitute anything more than the sounds of a family living in a wood frame constructed building.

I further note that from the tenant's written submission that she has taken offense to these noises because she considers the upstairs to be inconsiderate and uncooperative. From her summary of events she indicates that lodged no complaints against her neighbour when she lived in the townhouse because the father was considerate and informed of the Irish dancing in advance.

She further notes in her testimony and submissions that she tried to work these issues out and in two separate handwritten notes from this tenant to the upstairs tenants dated October 2007 and November 2007 respectively she indicates she finds the upstairs tenants noise to be a result of the tenants not being considerate.

Conclusion

Based on the above findings, I dismiss the tenant's application without leave to reapply.

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: July 14, 2010.

Dispute Resolution Officer