



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MNDC, OLC, FF

Introduction

This hearing dealt with the tenant's application for an order setting aside a notice to end tenancy, a monetary order and an order that the landlord comply with the Act. Both parties participated in the conference call hearing.

At the hearing the parties advised that the landlord had withdrawn the notice to end tenancy and that the tenancy would end on August 31. I consider the claims for orders setting aside the notice and for the landlord to comply with the Act to have been withdrawn.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy started on September 1, 2009 and that the rental unit is on the upper floor of a home in which the first floor is a separate rental unit and the lower floor is occupied by the landlord. The tenant testified that throughout the tenancy the landlord and the occupants of the first floor suite have frequently complained that the tenant and his roommates were excessively noisy. The tenant provided copies of correspondence between himself and the landlord and between himself and the first floor tenant. The tenant and his roommate testified that they made every effort to minimize the noise emanating from their unit but that they continued receiving complaints for noises associated with daily living. The tenant grouped the

confrontations into two concentrated timeframes of one month each. The tenant testified that when communicating the complaints from the first floor resident, the landlord on occasion threatened him with eviction or acted in an aggressive and hostile manner. The tenant testified that on several occasions the landlord made remarks to his female roommate that she should be cleaning the unit because she was a woman. The tenant and the roommate found the remarks to be offensive and sexist. The tenant and his roommate further testified that the landlord worked on a roof area which was next to a window of the rental unit without having first advised the tenant that he would be doing so. The tenant's roommate was surprised to see the landlord on the roof and felt that her privacy had been compromised as she could normally carry on with her usual activities without covering the window.

The landlord testified that he received frequent complaints from the resident of the first floor unit and argued that he was merely trying to achieve peace in the household by passing those complaints along to the tenant. The landlord testified that he is hard of hearing and usually did not hear noise, but followed up on the complaints anyway. The landlord could not recall having been on the roof near the tenant's window.

Analysis

Section 28 of the Act provides as follows.

- 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
- 28(a) reasonable privacy;
 - 28(b) freedom from unreasonable disturbance;
 - 28(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];
 - 28(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I accept that the tenant and his roommates made efforts to minimize the noise coming from their unit. It is clear from the correspondence that the tenant was unfailingly

courteous and made attempts to live peaceably with his neighbours and landlord. I also accept that the landlord received frequent complaints from the first floor occupant.

In order to establish his claim the tenant must prove not just that the landlord disturbed him, but that this disturbance was unreasonable. Having reviewed the facts I am unable to find that the disturbance can be characterized as unreasonable. The landlord had an obligation to ensure that the tenants in each of the suites had quiet enjoyment of their units. The fact that the landlord is hard of hearing made his job particularly difficult as he was unable to independently determine whether the complaints from the resident of the first floor unit were legitimate. I find that the frequent warnings given by the landlord constituted nothing more than a discharge of his duty to ensure the tenant did not disturb the resident of the first floor unit. While the landlord's manner may have been somewhat brusque, I am unable to find that his behaviour was unacceptable to the degree that compensation is warranted.

While I accept that the landlord was on the roof at a time when the tenant's roommate was in her bedroom, I do not accept that the landlord having been on the roof of the residence constituted a breach of the roommate's privacy. There is no suggestion that the landlord made any effort to look into the window and in my view, the landlord bore no obligation to warn the tenant prior to working on the roof.

I find that the remarks made by the landlord which the tenant and his roommates found to be sexist cannot be construed as having in any way violated the Act or tenancy agreement.

Conclusion

I find that the tenant has failed to prove an entitlement to compensation for loss of quiet enjoyment and accordingly I dismiss the claim.

Dated: August 27, 2010

Dispute Resolution Officer