



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes FF, O, OLC

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for an order for the landlord to comply with the Residential Tenancy Act or tenancy agreement, to ensure that the applicant has quiet enjoyment of his rental unit. The applicant is also requesting that the respondent bear the \$50.00 cost of the filing fee that was paid for the application for dispute resolution.

Background and Evidence

Applicant

The applicant is alleging that the tenant in the rental unit above him has been purposely disrupting his sleep for many months now and that the landlord has failed to take appropriate action to resolve the problem even though he as requested that she do so.

The applicant has supplied an extensive written submission outlining the alleged ongoing disruptions through the months of July 2010 and August 2010 and has testified that the disruptions have continued through the month of September 2010.

The applicant stated that it is his belief that the upstairs tenant is disrupting his sleep on purpose to retaliate for what she considers to be unreasonable guitar playing from his rental unit, although he only plays his guitar during reasonable hours at a reasonable level.

The applicant is therefore requesting that the landlord take actions to deal with the disruptions caused by the upstairs tenant to ensure that the quiet enjoyment of his rental unit is re-established.

Respondent

The respondent testified that she feels like she is stuck in the middle. The applicant has made allegations that the upstairs tenant is making noise throughout the night, and the upstairs tenant has denied making any noise and has made allegations that the applicant is disrupting her sleep with loud banging for no reason in the middle of the night.

The respondent also stated that the applicant has supplied no evidence other than his word, that the upstairs tenant has been making unreasonable noise, and she is inclined to believe the upstairs tenant, because the upstairs tenant had been in the rental building for some time before the applicant moved in and the previous tenants made no complaints about noise.

The respondent also stated that the upstairs tenant has had to call the police three times due to the disruptions caused by the applicant and that the upstairs tenant is concerned for her safety.

She does not believe that it would be reasonable to evict the upstairs tenant simply on the unsubstantiated claims of the applicant especially when she feels the upstairs tenant is more credible.

Analysis

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case the applicant has supplied no evidence in support of his claim that the upstairs tenant is purposely disrupting his sleep by making noise in the middle of the night. It is basically just his word against that of the other tenant and that is not sufficient to meet the burden of proof.

The evidence shows that the landlord has taken reasonable steps in response to the applicant's complaints and has contacted the upstairs tenant to try and deal with the matter; however in the absence of any proof, it would be unreasonable to expect the landlord to evict the upstairs tenant simply on the word of the applicant.

There is insufficient evidence to prove that the landlord has failed to comply with her obligations under the Residential Tenancy Act or the tenancy agreement and I am therefore not willing to issue any orders against landlord.

Conclusion

This application is dismissed in full.

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: September 20, 2010.

Dispute Resolution Officer