

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with the tenant's application seeking an Order that the landlord comply with the *Act* and regulations. The tenant submits that she is being unreasonably disturbed by other occupants.

The tenant stated the landlord was served with notice of this application and hearing by registered mail on August 16, 2010 and that the evidence provided in support of this application was provided to the landlord at their office on September 20, 2010.

Based on the evidence provided by the tenant, I am satisfied that the landlord was served with notice of this proceeding by registered mail and I deem that the landlord received notice on the fifth day after the registered mail was sent pursuant to section 90(a) of the *Act*. I proceeded with the hearing in the absence of the landlord.

Issues(s) to be Decided

Are there grounds to Order the landlord to comply with the *Act*, regulations or tenancy agreement following the tenant's complaints about noise and smoke from another occupant in the rental unit?

Background and Evidence

According to the tenant's oral evidence this tenancy began in June 2005. The current monthly rent is \$1,371.00 due on the 1st of each month and the tenant paid a security deposit of \$625.00. There are no terms in the tenancy agreement banning smoking in rental unit; however, there are rules about no smoking in common areas in the rental building.

The tenant has been experiencing problems with an occupant in another unit since approximately March 2010. The tenant has written the landlord on several occasions to

complain about the problems and has also had numerous discussions with representatives of the landlord.

The tenant has communicated with the landlord how she has been disturbed on numerous occasions by the occupants being loud and by the other occupants smoking on their patio or on the common ground close to the building. The tenant provided evidence that on a number of occasions she has had to call the police to deal with the noise and parties occurring at the other rental unit. The tenant also documents how the smoke from the outside patio and sidewalk drifts up into her rental unit.

The tenant has requested that the landlord enforce a City of Vancouver bylaw which bans smoking in or near buildings. The tenant indicated the bylaw officer would not enforce the bylaw at the rental building but that the landlord should be enforcing it.

The tenant submits that the landlord has failed to take corrective action and her quiet enjoyment is being impacted. The tenant seeks an Order that the landlord comply with the *Act*, regulations and tenancy agreement to take corrective action to protect her right to quiet enjoyment.

Analysis

A breach of quiet enjoyment includes when a tenant's right to enjoy their premise in peace and without unreasonable disturbance. Temporary discomfort or inconvenience does not constitute a breach of a tenant's quiet enjoyment; however, substantial interference or ongoing disturbances can constitute a breach of a tenant's right to quiet enjoyment. Ongoing and unreasonable noise could result in the loss of a tenant's right to quiet enjoyment.

A landlord is required to balance and protect the rights of each tenant. While a landlord would normally not be held responsible for the actions of other tenants, a landlord must take reasonable steps to address and correct a situation where the landlord is aware that one tenant is unreasonably disturbing another tenant.

Section 47 of the *Act* provides that a landlord may end a tenancy by issuing a one month Notice to End Tenancy for Cause. One of several grounds that can be identified as a basis to end a tenancy is the ground that the tenant has significantly interfered with or unreasonably disturbed another occupant.

From the evidence provided by the tenant I am satisfied that there have been multiple noise complaints. The tenant wrote the landlord four letters about disturbing noise on

March 27, April 2 and 27th, and June 4, 2010. On two occasions the tenant has also called the police to deal with the situation.

Pursuant to section 62(1)(b) of the Act, and in the absence of any response from the landlord, I find that it is reasonable to Order that the landlord take immediate measures to address and correct the issue of noise disturbances experienced by the tenant. This should include issuing warning letters and if the problem does not resolve, may eventually require that a notice to end tenancy be issued pursuant to section 47 of the *Act*.

With respect to the tenant's complaint about the smell of smoke and her request that the landlord enforce the City of Vancouver's Health Bylaw, I find that this cannot be enforced on individual tenancies or rental units unless no smoking has been agreed upon as a term of each tenancy agreement. Each rental unit, including patio or balconies, are private premises which are only governed by the terms of each tenancy agreement and the *Residential Tenancy Act* and regulations.

The landlord, or the City of Vancouver, may decide that the bylaw and bylaw requirements are applicable to the common perimeter of the residential building. However, I find that this is a matter between the landlord and the city and I decline the tenant's request that I Order the landlord to comply with the bylaw.

Conclusion

I have granted the tenant's application in part, and have Ordered that the landlord comply with the *Act* by addressing the noise complaints received and take appropriate and reasonable steps to address the problem. If the landlord fails to take reasonable measures the tenant may file a new application for Dispute Resolution.

I have declined to grant the tenant's request that the landlord comply with a City of Vancouver Health bylaw. I find that this bylaw does not govern individual rental units or tenancies and cannot be enforced with respect to private balconies or patios.

As the tenant has been partially successful with this application, I grant the tenant's request that the landlord reimburse the tenant the \$50.00 paid for this application. The tenant may deduct this sum from her next month's rent.

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: October 05, 2010.

Dispute Resolution Officer