



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for an order to compel the landlord to comply with the Act.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether the tenant is entitled to an order to force the landlord to comply with the Act.

The burden of proof is on the applicant to prove the claims and requests contained in the tenant's application.

Background and Evidence

The tenancy began in 2002 and current rent is \$1,000.00. The tenant testified that the they had been subjected to excessive noise from 2 different adjacent suites over a long period of time and that the landlord has refused to take appropriate action to protect the tenant's right to quiet enjoyment.

Submitted into evidence was a written statement from the tenant, copies of communications from the tenant and the landlord and a copy of the tenancy agreement.

The tenant discussed how the occupant in the suite above made noises during the night that sounded like moving furniture and hammering that repeatedly woke the tenant from a sound sleep. The tenant discussed how the resident living in the unit next door played music too loud, often late at night disturbing the tenant. The tenant testified that these concerns about noise were reported to the landlord many times. The tenant stated that she is aware that the tenant next door had been warned several times in 2009. The tenant stated that complaints had positive results but only for a limited time, after which the tenant always resumed his former behavior. The tenant acknowledged

that the noise disturbances had recently ceased, however the tenant feels that this does not necessarily indicate that the problem will not recur according to the pattern established. The tenant feels that the landlord is failing in its responsibility under the Act by not doing enough to ensure that the tenant's quiet enjoyment is protected.

The landlord stated that it has consistently followed up on the tenant's complaints and while a few of the concerns about noise had been found to be valid, many of the tenant's complaints were determined to be unfounded. The landlord also expressed concern about the tenant's actions in contacting other residents. A warning letter had been sent to the tenant pointing out that this conduct was perceived to be harassment.

The landlord agreed that the tenant's concerns about excessive noise will be investigated further. In fact, the landlord stated that it is willing to permit the tenant to contact a designated person in the building the next time a significant disturbance occurs from either the unit above or the neighbouring unit to observe. The landlord stated that this would allow the landlord to make a thorough assessment regarding whether or not there was a violation of the Act by the other residents due to excessive noise. The landlord agreed that it is prepared to take action if any tenant is found to be causing an unreasonable disturbance. All parties agreed that the tenant may also contact police if she feels that the municipal noise bylaws have been contravened.

Given the above, I find that the parties have reached a potential resolution which could resolve this matter for the time being.

Conclusion

Based on the mutual agreement, I find that the parties have found a way to address the tenant's complaint and therefore no order will be issued.

If any future disputes arise that cannot be resolved in regards to this or any other issue, either party is at liberty to make application for dispute resolution. In consideration of the agreement reached, this application is dismissed with 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: January 2011.

Residential Tenancy Branch