



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OLC

Introduction

This hearing was convened in response to an application filed by the tenant seeking an Order that the landlord comply with the *Residential Tenancy Act*.

Issue(s) to be Decided

Should the landlord be ordered to comply with the Act?

Background and Evidence

The tenant testified that she has been living in this suite since 1989. The tenant submits that from the first day of her neighbour's tenancy, there have been odours of marihuana and aerosol sprays in the hallways. The tenant submitted a note from her doctor stating that she suffers from severe allergies. The tenant says he has been on allergy pills since 1979. The tenant says the doctor has given her a prescription for treating her scalp and for eruptions under her skin which are very itchy. The tenant says she suffers more now from cataracts and dry eyes. The tenant says she often suffers severe headaches, becomes nauseated and her neck and shoulders seize up. The tenant says she feels as though she is being abused because there is no clean air. The tenant says she has complained numerous times that the aerosol odours linger in the hallway and seep into her room the tenant says nothing has been done to rectify the problem.

The landlord submitted the building has never been a "no smoking" building however smoking or spraying aerosols in the common areas is not permitted and there has been no evidence that this tenant's neighbour is spraying aerosols or smoking in the hallways. The landlord says the neighbour does use an antiperspirant called Axe which is quite strong and the scent lingers in the hallways for a short time but it is not substantial. The landlord says that upon receiving the tenant's complaints he went to her floor immediately on 3 separate occasions but could smell nothing. The landlord agrees that there are odours from cooking or smoking in the building as there are 80

units and the building is old. The landlord says when certain odours bother him he opens his window to allow for airflow and the smells dissipate easily. The landlord says there is not a lot he can do about this tenant's neighbour as there is no evidence that he is violating any rules and there are no grounds for evicting him. The landlord realizes that this tenant has an acute sensitivity to scents so he has asked her neighbour to move and he refused. The landlord says they also offered to move this tenant to another floor but she refuses to move as well.

The tenant responded that she has lived in this suite for 22 years and she has no intention of moving and the landlord is responsible for ensuring her quiet enjoyment of the property which has been violated.

Analysis

At common law, the covenant of quiet enjoyment promises that a tenant shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy. A landlord does not have a reciprocal right to quiet enjoyment. The Residential Tenancy Act establishes rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy,
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however a written provision setting out the terms in the tenancy agreement pertaining to the provision of quiet enjoyment cannot be used to remove any of the rights of a tenant established under the Legislation. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the *ordinary and lawful enjoyment* of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were

leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force *which is within the landlord's power to control*.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission;
- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

While the tenant complains that her neighbor is using aerosol sprays and/or smoking in the common areas of the rental building, she has not supplied sufficient evidence to prove these claims. When one resides in a multi-unit building there are often smells and noises that one must contend with which one might not encounter in a single family residence and the landlord says the smell may be coming from the neighbour's antiperspirant. Often parties who are informed of the difficulties their actions cause for others will change their actions to accommodate the living needs of others in their multi-family residence. However, while there is a trend is toward relaxing the limits of purely physical interference in consideration of a claim of loss of quiet enjoyment, I cannot find that the landlord has any power or control over the type of antiperspirant his tenants wear at all or certainly to the extent that he should be held responsible for the breach of another tenant's quiet enjoyment. So the landlord has done what he could; he has offered to move this tenant but, despite her complaints as to how the odours exacerbate her allergies, she refuses to move.

Conclusion

The tenant's claim is dismissed.

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*.
