



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This hearing was scheduled to hear the tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; authorization to reduce rent; and recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the tenant entitled to compensation from the landlord for loss of quiet enjoyment?
2. Is the tenant entitled to reduce rent until such time the neighbouring tenant vacates the adjacent rental unit?

Background and Evidence

The tenancy commenced approximately 4.5 years ago and starting March 1, 2011 the tenant's rent increased to \$1,125.30 from \$1,100.00 per month. There are four rental units in the residential property whereby two units face the front of the building and two units face the back of the building.

In making this application, the tenant is seeking compensation for the past 12 months at the rate of \$100.00 per month for loss of quiet enjoyment. The tenant is also seeking authorization to reduce her rent by \$100.00 per month until such time the tenant that lives in the adjacent unit (herein referred to as "the neighbour") vacates his unit.

The tenant submitted the neighbour has been disturbing her quiet enjoyment by talking loudly on his telephone and slamming doors in his unit. In addition the neighbour was verbally abusive towards her in the parking lot.

The tenant also described an incident on March 7, 2011 where the neighbour was talking loudly so the tenant banged on her wall, the neighbour banged back, and the

tenant banged again. This was followed by the neighbour coming out onto his balcony and shouting at the tenant and questioning her mental state.

The tenant acknowledged that after complaining to the landlord the landlord talks to the other tenant; however, nothing changes. The tenant also acknowledged that the other tenant is deaf but explained that he should talk on his phone in his living room rather than his bedroom to be more considerate.

The tenant submitted that the neighbour started this disturbing behaviour after the tenant had complained to the landlord about the behaviour of the neighbour's son when the son lived with the neighbour. The son vacated the unit next door in September 2010 after the landlord had issued the neighbour a Notice to End Tenancy. However, the landlord did not enforce the end of the neighbour's tenancy once it was agreed that the neighbour's son would vacate the unit.

The landlord submitted that the neighbour has resided in his unit since December 2003 and no other tenants have complained about him. In June 2010 the landlord received complaints about the neighbour's son. In July 2010 there was a meeting with the landlord, the tenant, and the neighbour where the main concerns revolved around the behaviour of the neighbour's son. Complaints continued to be received about the son after that meeting and the landlord issued a Notice to End Tenancy to the neighbour. When it was agreed that the son would vacate the rental unit, the landlord was of the position that the problem had been resolved and the neighbour's tenancy continued.

The landlord acknowledged receiving complaints from the tenant about the neighbour and the landlord has talked to the neighbour in response to the complaints. However, the neighbour denies any wrong doing. The landlord claims that he has asked the tenant to call him when she is being disturbed and he will come over to address the situation as the landlord lives only five minutes away. The tenant has yet to call the landlord at the time she is being disturbed.

The landlord sums this issue up to a personality conflict between the two tenants and does not know what more he can do given the different version of events he is provided by the two tenants and the neighbour's right to use and enjoy his rental unit. The landlord pointed out that the other tenant is entitled to have friends over and talk on the phone and the landlord cannot restrict the neighbour from using his phone in his bedroom.

Analysis

Under the Act, every tenant is entitled to quiet enjoyment. Section 28 of the Act provides that:

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (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]*;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 provides examples of when a breach of quiet enjoyment may be found. The guideline states, in part,

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 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.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

[my emphasis added]

Upon hearing undisputed testimony that the landlord has talked to the neighbour on several occasions, and has met with both tenants, after receiving complaints from the tenant, I do not find the landlord has sat idly by or failed to take any action to address the concerns brought to his attention. From the submissions before me, I have determined that the issue is whether the landlord has taken sufficient and reasonable steps to respond to issues he has been notified about.

Upon consideration of the tenant's schedule of events, it is evident that between the months of March 2010 through September 2010 the primary source of the tenant's complaints is the neighbour's son. However, it is not until June 18, 2010 that the tenant makes records in her schedule of events that she contacts the landlord about disturbing behaviour. This record is consistent with the landlord's statements during the hearing. I heard that the landlord had a meeting with the two involved tenants in July 2010 and the landlord issued a Notice to End Tenancy to the neighbour in August 2010. The landlord was successful in having the other tenant's son vacate.

In light of the above, I find the landlord's action was sufficient and reasonable in dealing with the complaints pertaining to the neighbour's son and sufficiently resolved the matter in a reasonable amount of time after being notified of the tenant's concerns. Therefore, I do not find the tenant entitled to compensation from the landlord for the months of March through September 2010.

From the tenant's schedule of events, the disturbing behaviour between October 2010 through February 2011 involved the neighbour talking loudly and slamming doors. The tenant does not provide evidence that she called the landlord when she was being disturbed as he requested her to do. Nor do I find evidence that the tenant put her complaints in writing. However, upon hearing from the landlord I accept that the tenant did have verbal discussions with the landlord and I accept that the landlord did speak with the other tenant about the tenant's complaints.

The tenant clearly wants the level of noise coming from the neighbour to decrease yet I do not find sufficient evidence she has contacted the landlord when the offending behaviour is taking place as he requested, or that she has put any effort into putting her complaints in writing to the landlord before filing this application. In order to make an award for compensation under section 7 of the Act, a party making a claim for compensation must take every reasonable step to reduce the amount of damage or loss they suffer. Therefore, I find the tenant has not taken sufficient measures to reduce the disturbances she is enduring and I do not find her entitled to compensation from the landlord for the months of October 2010 through March 2011.

With respect to the incident on March 7, 2011 I find the tenant actively engaged the neighbour by banging on his wall twice. I find both tenants conducted themselves inappropriately and I do not find the tenant entitled to compensation from the landlord for this incident.

In light of all of the above findings, I dismiss the tenant's claim for compensation and a rent reduction. I make no award for the filing fee.

In future, I encourage the tenant to do as the landlord requested, which is call him when she is being disturbed, and put her complaints in writing for the landlord.

With respect to the tenant's comments about thin walls, the parties are informed that the landlord is not required to make repairs or improvements to the residential property, such as soundproofing, unless required to comply with health, safety or building standards required by law. Also, the Act requires that a landlord maintain a property so that it is suitable for occupation; however, the Act also stipulates that the age, character and location of the rental unit are to be taken into account.

Conclusion

The tenant's application has been 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*.

Dated: April 28, 2011.

Residential Tenancy Branch