



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application requesting an Order the landlord comply with the Act.

The tenant's advocate testified that the Canada Post web site shows that registered mail was sent to the landlord and signed as accepted by the on-site manager, on November 23, 2011. The tenant's witness provided affirmed testimony that he had mailed the Notice of hearing package to the landlord.

These documents are deemed to have been served in accordance with section 89 of the Act; however the landlord did not appear at the hearing.

Issue(s) to be Decided

Must the landlord be Ordered to comply with the Act?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenant has lived in the rental unit since 1988. The wood-framed building was 20 years old when he moved into his unit; the building has over 38 units; perhaps as many as 50.

The tenant testified that approximately 7 or 8 months ago a new occupant moved into the unit above him. Since that time the tenant has made verbal requests to the landlord that they investigate what the tenant finds are on-going efforts by the occupant above him to disturb his right to quiet enjoyment during the night when he is trying to sleep.

The tenant stated that as recently as 3 weeks ago he spoke to the on-site manager expressing concerns in relation to noise in the night, such as what seems to be intentional pounding on the floor. The tenant stated the landlord shrugged his shoulders and has not responded to his concerns.

Analysis

Section 26 of the Act provides:

Protection of tenant's right to quiet enjoyment

28 *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.*

(Emphasis added)

The tenant did not provide any specific dates or times that the occupant above him has caused disturbances, or any evidence that he has given the landlord written notice of his concerns. However; there is no doubt that the tenant believes that the occupant above him is attempting to disrupt his right to quiet enjoyment.

The Act requires a landlord to respond to concerns within a reasonable period of time. I would expect the landlord to investigate a report of disturbances and to communicate with the tenant, in relation to his findings. I would expect the tenant to clearly express his complaints by way of written communication; copies of which the tenant should retain.

I find that a formal Order that the landlord comply with the Act is not required. The tenant understands he must clearly communicate his concerns in relation to his reported loss of quiet enjoyment and, once he does this, the landlord is compelled by the Act to take appropriate steps. There was no evidence before me of the dates that the landlord has been given notice of the tenant's concerns.

Therefore, the tenant's claim is dismissed; however, he has leave to reapply should he believe the landlord has failed to comply with the Act.

Conclusion

The 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: December 07, 2011.

Residential Tenancy Branch