



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, OLC

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for an order that the landlord comply with the *Act*, regulation or tenancy agreement and for a rent reduction.

The landlord and the tenant both attended the conference call hearing, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All evidence and testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to a reduction in rent?

Background and Evidence

This month-to-month tenancy began on September 1, 2010 and the tenant and the tenant's brother still reside in the rental unit. Rent in the amount of \$1,600.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$800.00. The rental unit is an suite in an historic building with 8 rental units in total.

The tenant testified that on-going renovations have been disturbing the tenant's right to quiet enjoyment since the beginning of July, 2011. The landlord is removing floor boards and pipes. The tenant suffers from a clinical depression and values quiet time. The tenant sleeps from 11:00 p.m. to about 7:00 or 8:00 a.m. and naps during the day. At times the tenant can't talk on the phone or watch TV due to the considerable level of noise. The apartment building shakes during the day-time hours and has become un-nerving. The landlord provided a note to the tenants on July 26, 2011 stating that the loudness of work would be short-lived.

On September 26, 2011 the tenant asked the landlord for a rent reduction but because there had been no rent increases, the landlord felt that was enough compensation for the disturbances, and the landlord told the tenant that the tenant was just after money. The tenant replied to the landlord that the noise is a breach of the agreement. The tenant did not complain to the landlord prior because the tenant was afraid of losing the apartment because the landlord had flatly refused to negotiate. Also, the tenant hoped that the renovations would be completed faster if the tenant didn't complain. The tenant is concerned about the landlord's honesty. The tenant lives right below the renovation which has been going on for 4 months now.

The tenant further testified that the claim is calculated at 20% of the rent because the note from the landlord said that work would be from 8:30 a.m. to 5:00 p.m.; in a 40 hour work week that calculates to 720 hours per month. Some weeks renovations are not in progress 5 days per week, but some weeks are. The tenant is not working, does not have a working schedule of the landlord, so the tenant cannot plan quiet enjoyment time except on weekends because no work is done on weekends.

The landlord testified that the tenant was told before renovations began that the suites needed renovations and the tenant agreed that the landlord should go ahead and do it. The landlord provided each tenant in the building with notice on July 26, 2011 that renovations would be commencing, but they didn't commence until mid-August. When plaster was being demolished, which is the noisier part of renovations, the landlord spoke to all tenants in the building who all stated that the noise didn't bother them at all, including this tenant.

On September 26, 2011 the landlord received an email from the tenant wherein the tenant asked for a rent reduction. However, the tenant did not explain in the email how renovations are affecting the tenant or ask the landlord to adjust the hours. The landlord was surprised at the email because neither the tenant nor the tenant's brother who lives in the rental unit ever complained. When the parties subsequently spoke, the tenant told the landlord that the noise isn't a bother, but told the landlord that the tenant was entitled to reduced rent and that the tenant could move without providing any notice to the landlord. The landlord then minimized the hours, showing up later and not going to the building every day. When the landlord sees the tenant's truck, the landlord only does quiet work or shops for supplies, changing the landlord's plan completely. The work could have been done a long time ago.

The landlord further testified that on 3 occasions the tenant has asked the landlord and the landlord's spouse to take away the washer and dryer and reduce the rent; the tenant could do laundry at a coin laundromat. The tenant was looking for a way to reduce the rent payable.

The landlord also testified that renovation work never starts before 9:00 a.m. and does not continue after 5:00 p.m. during the week, and never on weekends or statutory holidays. Also, due to medical issues of the landlord and the landlord's spouse, work was not done every day, and the renovations are taking longer to complete because the landlord is trying to minimize the noise.

The landlord also testified that another tenant had asked the landlord to stop working due to an anniversary party, and the landlord did not work for a week. This tenant has never asked the landlord to stop work or adjust the hours.

Analysis

In the circumstances, I find that the tenant has failed to communicate any complaints to the landlord up until the email of September 26, 2011. I also accept the undisputed testimony of the landlord that the tenant told the landlord that the noise was not bothersome but the tenant was entitled to a rent reduction. I also accept the undisputed testimony of the landlord that the tenant has on 3 occasions asked the landlord and the landlord's spouse to remove the washer and dryer in an effort to reduce the rent.

The *Residential Tenancy Act* states:

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.

I find that the tenant has failed to establish that the landlord has caused the tenant any loss of quiet enjoyment, but the tenant has merely established that the tenant feels an entitlement to reduced rent, which is not the intent of the legislation.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without 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 6, 2011.

Residential Tenancy Branch