



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

This tenancy began December 22, 2011 with monthly rent of \$1150.00 and the tenant paid a security deposit of \$575.00.

The tenant testified that shortly after she moved in to the rental unit that she started to have problems with all the noise coming from the unit above hers. The tenant stated that the unit above hers is owner occupied and that after contacting the strata she started to keep a record of all the dates and times of the loud noise.

The tenant stated that she had approached the owner of the other unit but had no resolution in regards to him limiting the noise. The tenant then on January 23, 2012 wrote a letter to the landlord about the on-going noise and how her peace and quiet enjoyment is being constantly disturbed. The tenant also referred to having her phone tampered with and being harassed and stalked but did not clarify how these issues related or if they were related to this tenancy.

The landlord testified that on January 20, 2012 the strata sent a warning letter to the owner of the upstairs unit but that he had not heard again from the tenant and did not know if the issue had been resolved.

The landlord advised the tenant that what he required was for the tenant to send him complaints about the noise which he could then forward to the strata. The landlord stated that without this chain of complaints the strata could not levy fines against the owner of the upstairs unit.

The tenant stated that something had to be done and soon and she and the landlord in this hearing agreed to meet in the next few days to discuss what could be done. The tenant also stated that if the issue is not resolved that she will have to give the landlord notice to vacate the rental unit.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to an order for the landlord to comply with the Act.

The tenant contacted the landlord on one occasion regarding the noise issue but has since that time, not provided the landlord with any additional dates and times of the noise disturbance. As the tenant has not stayed in touch with the landlord regarding this matter, the landlord has not had the opportunity to respond to the concern. With no complaints from the tenant the landlord has not been able to contact the strata for resolution.

The parties in this hearing have agreed to meet and see what if anything can be done about the noise from the upstairs unit.

Based on the above I find that the tenant has not proven their case on why the landlord should be ordered to comply with the Act, therefore the tenant's application is dismissed without leave to reapply.

Conclusion

The tenant's application is 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: February 23, 2012

Residential Tenancy Branch