



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, O

Introduction

This hearing was convened by way of conference call in repose to the tenant's application to resolve issues concerning noise from another tenant and the landlords alleged failure to act and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Has the tenant established that the landlord has not protected her right to quiet enjoyment of her rental unit?

Background and Evidence

Both parties agree that this tenant originally moved into the rental unit as a roommate of the existing tenant in January 2008. On June 01, 2011, after the original tenant moved out, the tenant entered into a tenancy agreement to rent this unit on a fixed term basis

for one year at a monthly rent of \$775.00. Rent is due on the first day of each month in advance.

The tenant testifies that in December, 2010 the landlord did renovations to the unit above the tenants and removed the carpet and put in hardwood flooring. The tenant states this in effect has removed the sound barrier between the two units. The tenant testifies that a tenant moved into the unit upstairs in April, 2011 and since that time the tenant has experienced loud noise from the tenant living upstairs.

The tenant testifies that this noise is often late at night when the upstairs tenant has guests. The tenant testifies she can hear the upstairs tenant stomping around in her unit; she can hear the upstairs tenant dragging furniture across the floor and hear the tenant and her guests talking and playing loud music late at night. The tenant states she did attempt to resolve this with the upstairs tenant and invited that tenant to stand in the downstairs unit while the tenant went upstairs and walked across the other tenant's floor and used her cell phone. The tenant states when she came back to her own unit the upstairs tenant agreed she could hear this tenant walking and talking in her unit. The tenant states that the noise from the upstairs tenant continued, often late at night and the tenant had to call the police out on three occasions to speak to the upstairs tenant about the noise.

The tenant testifies that she verbally notified the landlord about her noise issues with the upstairs tenant and testifies that the landlord informed her he could not do anything as it was a case of he said, she said. The tenant states the landlord encouraged the tenant to file her application for dispute resolution.

The tenant testifies that she did apply for copies of the police reports but as she only received those yesterday she was only able to provide them as late evidence. These Police reports have not been received before the hearing by the Dispute Resolution Officer. The tenant agrees that the Police reports do not contain information about any

noise issues emanating at the upstairs tenants unit and only detail the complaints from this tenant to the police.

The landlord testifies that this is an old large house with eight units and eight people live in the house. The house was originally built with no insulation and sound does travel in the house. The landlord states that these two tenants live above and below each other and are experiencing a personality clash. The landlord testifies that each time this tenant calls him to complain about the upstairs tenant he would respond by calling the upstairs tenant. The landlord testifies that each time the upstairs tenant informs the landlord that she is not making any noise.

The landlord testifies that he lives approximately 20 kilometres away from the house so if this tenant was to call him about noise it would most likely be over by the time he got to the house to investigate. The landlord testifies that he did go to investigate the upstairs unit after this tenant informed him she could hear furniture being dragged across the floor. The landlord testifies he inspected the floors and there was no evidence of this as they were unmarked.

The landlord testifies that the tenant went on vacation for two months and her daughter lived in her unit during this time. The landlord testifies that he asked the tenant to inform her daughter to document any noise issues she experienced while living in her mother's unit and to send this to the landlord. The landlord testifies he did not receive any complaints from the tenant's daughter. The landlord testifies that he has not received any written complaints from the tenant concerning noise from the upstairs tenant until he received the tenants hearing package. The landlord testifies that he has now been threatened with harassment from the upstairs tenant because he has to keep calling her about the noise complaints. The landlord states without firm evidence from this tenant he is unable to take the necessary action to deal with this matter.

The landlord testifies that the other six tenants residing in the house have written support letters and signed statements for the upstairs tenants to inform the landlord that

they have not experienced any noise issues from her unit and the other six tenants seem to understand that this is a wooden building that does suffer from noise transference. The landlord testifies that he replaced the old worn out carpet with hard wood flooring because this is what tenants want and he cannot now replace this hardwood floor with carpet.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim that the upstairs tenant has caused so much noise that it was disturbed this tenant; The tenant argues that the landlord has not protected her right to quiet enjoyment of her rental unit. The landlord argues that he cannot take the required action as this tenant has not provided the landlord with sufficient evidence to warrant the landlord issuing the upstairs tenant with a Notice to End Tenancy for cause.

In this matter the tenant must meet the burden of proof to show that the landlord has failed to protect her right to quiet enjoyment. I find from the documentary evidence presented along with the verbal testimony of both parties that the tenant has not met the burden of proof in this matter. The tenant states she has complained to the landlord and the police but has provided insufficient evidence to show that the upstairs tenant has caused noise disturbances beyond noise related to normal living. The tenant testifies that she sent in copies of the police reports but these have not been received by the time of writing this decision and the tenant agrees the reports would only show that she made complaints and not any findings by the Police Officers attending.

If the landlord was to serve the upstairs tenant with a One Month Notice to End Tenancy for cause based on the reasons this tenant has provided, the landlord would be unable to substantiate the reasons given on that Notice if the upstairs tenant was to dispute that notice. In that scenario the burden of proof would then fall to the landlord and he would be unable to meet that requirement based on the evidence I have heard today.

Consequently, I find the tenants application is dismissed with leave to reapply.

I caution the landlord to ensure he investigates any further reasonable complaints made by this tenant regarding noise issues.

As the tenant has been unsuccessful with her claim I find the tenant must bear the cost of filing her own application.

Conclusion

The tenant's 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: February 13, 2012.

Residential Tenancy Branch