



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC and OLC

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement, pursuant to sections 62(3) and 67 of the *Act*.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

The issue to be decided is whether there is a need for an Order requiring the Landlord to comply with the *Act*, specifically to end the tenancy of an individual living above the Tenant; and whether the Tenant is entitled to compensation for noise disturbances.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 01, 2010 and that the Tenant has frequently informed the Landlord, at various times during the tenancy, that she is being disturbed by noise emanating from rental unit #308.

The Tenant stated that the second floor of her rental unit is below unit #308; that she is disturbed on a daily basis, at various times during the day and night, when the occupant of unit #308 moves with the aid of her walker; that she is disturbed on a daily basis, at various times during the day and night, when the occupant raises/lowers her reclining chair, which she often sleeps in; that she is continually disturbed by a noise the Tenant

describes as a “seal type barking noise”, which she can hear whenever the occupant of unit #308 is at home; that she is disturbed once or twice every four or five days when the occupant of unit #308 “hoots and hollers” as if she is cheering at a sports event; that the aforementioned cheering lasts for approximately 20 minutes on each occasion; that she is disturbed once or twice every four or five days when the occupant of unit #308 laughs and talks loudly, sometimes yelling; that the aforementioned laughing/talking lasts for approximately 20 minutes on each occasion; and that she is disturbed by television or radio noises on a continual basis, with the exception of the period between 2 a.m. and 6 a.m.

The female Agent for the Landlord stated that after receiving a telephone complaint from the Tenant regarding noise emanating from unit #308 she met with the Tenant in her rental unit on October 05, 2011; that while they were in the Tenant’s rental unit the Tenant indicated to the Agent for the Landlord that she could hear noise from unit #308; that the Agent for the Landlord could not hear noise from unit #308 while she was in the Tenant’s rental unit; and that she went to unit #308 immediately thereafter and determined that the occupant of unit #308 was listening to television and that the volume on the television was at an acceptable level.

The female Agent for the Landlord stated that when she was in unit #308 on October 05, 2011 she observed the occupant using her reclining chair, at which time she determined that the reclining chair was functioning properly and that it made a “slight thud” when brought to the upright position.

The female Agent for the Landlord stated that the occupant of unit #308 was given a written warning in November of 2009, as a result of the previous occupant of unit #113 complaining of noise disturbances. She stated that the former occupant of unit #113 was complaining about noise generated by the occupant of unit #308’s walker; that the occupant of unit #308 replaced her walker with a walker equipped with wheels; and that she believes that resolved that particular concern.

The female Agent for the Landlord stated that the occupant of unit #308 was given a written warning, dated October 29, 2010, in which she was advised that her television was disturbing other occupants, at which time she was reminded that she must be quiet between the hours of 11 p.m. and 8 a.m.

The female Agent for the Landlord stated that the occupant of unit #308 was given a written warning, dated May 27, 2011, in which she was advised that her television and walker was disturbing other occupants, at which time she was reminded that she must be quiet between the hours of 11 p.m. and 8 a.m. In this letter the Landlord informed the occupant that it understands she is trying to reduce the noise level, so they are not taking action against the occupant’s tenancy at this time.

The female Agent for the Landlord stated that the occupant of unit #308 was given a written warning, dated January 04, 2012, in which she was advised the Tenant that the police and caretaker had determined that the music in her rental unit was playing very

loudly in her unit at 9:29 p.m., while she was away from home. In this letter the occupant of unit #308 was clearly advised that she cannot play her music or television at excessive levels and the Landlord suggested that the occupant use a head set or ear device so she will not disturb other occupants. In this letter the Landlord clearly informs the occupant that her tenancy will be terminated if another noise complaint is received.

The female Agent for the Landlord stated that that in addition to the aforementioned written warnings, she has had several conversations with the occupant of unit #308 regarding noise concerns.

The female Agent for the Landlord stated that the Landlord has also received complaints about the Tenant from the occupant of unit #308, including that the Tenant was banging on her ceiling and leaving a note that requested the occupant of unit #308 refrain from vacuuming between 10:30 a.m. and 1:00 p.m. The occupant of unit #308 has informed the Landlord that she feels harassed by the Tenant.

The female Agent for the Landlord stated that the Landlord has contacted neighbours living around unit #308; those neighbours agree that the occupant is noisier than the average occupant; and that those neighbours have indicated they are not disturbed to the point that they would lodge a complaint.

The female Agent for the Landlord stated that the Landlord has not yet attempted to end the tenancy of the occupant of unit #308 because not all of the complaints received from the Tenant can be substantiated; because the occupant of unit #308 has resided in the rental unit for ten years; and because the Landlord's mandate is, in part, to provide safe, secure, and affordable housing to people who can be difficult to house.

The male Agent for the Landlord stated that he is currently a caretaker at the residential complex; that he has never received a complaint about noise from this rental unit from any other occupant; that he has been in the Tenant's rental unit, at the invitation of the Tenant, at which time he could hear the occupant of unit #308 making an unusual noise, which he believed was related to difficulty breathing; that he did not find the unusual noise disturbing; that he could hear a noise that the Tenant believed was a walker, but he believed was caused by the occupant moving a heavy object across the floor; and that noises from unit #308 are very difficult to hear when not inside the Tenant's unit.

The Witness #1 stated that he is a member of the Victoria Police Department and is currently assigned to Crime Free Multi-housing Unit. He stated that on December 24, 2011 the police received a complaint from the Tenant, in which she reported excessive noise in unit #308; that police officer(s) attended but made no reference of the noise level in the rental unit; and that the occupant of unit #308 informed the police she had a hearing impairment and that she would turn down the volume of her television.

The Witness #1 stated that on December 26, 2011 the police received a complaint from the Tenant, in which she reported excessive noise in unit #308; that police officer(s) attended but made no reference to the noise level in the rental unit; and that the occupant of unit #308 turned off the television at the request of the police.

The Witness #1 stated that on December 31, 2011 the police received a complaint from the Tenant, who reported excessive noise in unit #308; that police officer(s) attended and noted that the noise, when heard from outside the unit, was audible but not particularly loud; and that the attending police officer(s) noted that the noise, when heard from inside the unit, was loud.

The Witness #1 stated that on January 02, 2012 the police received two noise complaints at different times, one of which was made by the Tenant and one of which was made an undisclosed occupant. He stated that the police attended at one occasion at 1136 hours and determined the noise was not excessive and on a second occasion at 2339 hours, at which time they determined that the occupant of unit #308 was not at home and music on the television was playing very loudly.

The Landlord and the Tenant agree that the second complaint on January 02, 2011 was generated by the occupant of unit #306.

The Witness #1 stated that on January 07, 2012 the police received a complaint from the Tenant, who reported excessive noise in unit #308 and that police officer(s) attended but could detect noise at the time of their attendance.

The Witness #2 stated that he was a caretaker at this residential complex between May 28, 2009 and January 21, 2010; that he never received a noise complaint regarding the occupant of unit #308; that he would occasionally walk past that unit and hear the television, but never at a level that was louder than a household vacuum; and that he would occasionally walk past that unit and hear the occupant talking, but never at a level that was louder than a typical conversation.

The Tenant submitted a document which appears to be signed by the occupant of unit #112 and is dated January 23, 2012, in which the author declared that he/she has been disturbed by "barking/hollering" from unit #308.

Analysis

Section 47(1)(d)(i) of the *Act* stipulates that a landlord may end a tenancy if a tenant significantly interferes with or unreasonably disturbs another occupant of the rental unit. In my view, this is the section of the *Act* that the Landlord would likely rely on to end the tenancy of the occupant of the rental unit #308, if the Landlord elects to end that tenancy.

When deciding whether to end a tenancy pursuant to section 47(1)(d)(i) of the *Act*, a landlord must first determine whether a disturbance caused by a tenant or the tenant's guest constitutes a significant interference or an unreasonable disturbance. Black's Law Dictionary, sixth edition, defines reasonable as "fair, proper, just, moderate, suitable under the circumstances". Black's Law Dictionary, sixth edition, defines unreasonable as "irrational; foolish; unwise; absurd; silly; preposterous; senseless; stupid".

In my view noises generated by a walker or the use of a properly functioning reclining chair, regardless of the time of day, are sounds of normal daily living activities and cannot be considered a significant interference or an unreasonable disturbance. I find that the Landlord acted reasonably when it did not attempt to end the tenancy as a result of noise arising from normal living activities of a person using a walker. I find that the Landlord acted reasonably when, in November of 2009, it informed the occupant of #308 that the noise from her walker was disturbing the person living below her. I find that the occupant of #308 acted reasonably when, after receiving this information, she obtained a different style of walker that is quieter.

In these circumstances, I find that the noise the occupant of unit #308 makes, which is described as a being like a “barking seal”, is likely an involuntary noise that is likely caused by a medical condition. In reaching this conclusion I was influenced, to a minor degree, by the male Agent for the Landlord’s opinion that it sounds like the noise is related to a breathing difficulty. In reaching this conclusion I was heavily influenced by the testimony of the Tenant, who stated that she can hear the noise whenever the occupant of unit #308 is home, which causes me to conclude that it is involuntary.

In my view the “barking seal” sounds are likely the sounds of normal daily living activities for the occupant of rental unit #308 and cannot be considered a significant interference or an unreasonable disturbance. I find that the Landlord acted reasonably when it did not attempt to end the tenancy as a result of this noise. In reaching this conclusion I was heavily influenced by the fact that no agent for the Landlord has indicated that the volume of this noise is unreasonable. In reaching this conclusion I placed little weight on the documentary evidence of the occupant from rental unit #112, as that party did not attend the hearing to describe the nature of the disturbance and the document did not outline the degree of the disturbance.

In my view the laughing, talking, and hooting sounds emanating from unit #308, while not typical sounds of daily living activities, are still not grounds to end the tenancy of the occupant in unit #308. As they occur relatively infrequently and are not constant, I find that they cannot be considered a significant interference or an unreasonable disturbance. In reaching this conclusion I was influenced, in part, by the fact that the Witness #2 categorized the talking to be in the level of normal conversation. In reaching this conclusion I was influenced, in part, by the fact that there is no evidence that the noises are malicious or are intended to disturb. Rather, I find that it is likely that the noises are related to a medical condition and that the community must be tolerant of such noises, to some degree.

In reaching this conclusion I placed little weight on the documentary evidence of the occupant from rental unit #112, as that party did not attend the hearing to describe the nature of the disturbance and the document did not outline the degree of the disturbance. I further note that there is no evidence of any other occupant of these residential complex reporting concerns about this behaviour to the Landlord.

I find that playing a television or a radio at excessive levels is, in some circumstances, grounds to end a tenancy. In these circumstances, I find that the Landlord has acted reasonably in not ending the tenancy up to this point. In reaching this conclusion I was heavily influenced by the fact that the Landlord has communicated with the occupant of unit #308, both orally and in writing, and has clearly informed the occupant that she must not play listen to music or watch television at an unreasonable volume; by the Landlord's belief that the occupant of unit #308 is attempting to be quieter; and by the fact that the Landlord gave this occupant a letter, dated December 24, 2011, in which she was advised her tenancy may be terminated if there is a further noise complaint.

I find that the Landlord's ability to resolve this matter is hampered, in part, by the Landlord's inability to substantiate some of the complaints made by the Tenant. In determining that not all of the Tenant's noise complaints have been substantiated, I was influenced by:

- The testimony of the female Agent for the Landlord that after receiving a telephone complaint from the Tenant regarding noise emanating from unit #308 she met with the Tenant in her rental unit on October 05, 2011; that while they were in the Tenant's rental unit the Tenant indicated to the Agent for the Landlord that she could hear noise from unit #308; that the Agent for the Landlord could not hear noise from unit #308 while she was in the Tenant's rental unit; and that she went to unit #308 immediately thereafter and determined that the occupant of unit #308 was listening to television and that the volume on the television was at an acceptable level.
- The testimony of the male Agent for the Landlord that he has been in the Tenant's rental unit, at the invitation of the Tenant, at which time he could hear the occupant of unit #308 making an unusual noise, which he believed was related to difficulty breathing; that he did not find the unusual noise disturbing; and that he could hear a noise that the Tenant believed was a walker, which he believed was something being dragged across the floor.
- The testimony of the Witness #1 who stated that on two occasions the police responded to a noise complaint made by the Tenant, at which time they concluded that it was not noisy in unit #308.
- The testimony of the Witness #1 who stated that on one occasion the police responded to a noise complaint made by the Tenant, at which time they concluded that it was not noisy outside of unit #308, but was loud inside the unit.
- The absence of evidence that indicates other occupants have complained about noise from this unit, except for one occasion when the Tenant left her unit with the television on and on one occasion in 2009 when the Tenant was using a different type of walker.

Given that not all of the complaints made by the Tenant have been substantiated, I find that the Landlord has acted reasonably when it has not acted on all unsubstantiated noise complaints they received from the Tenant. In reaching this conclusion I find that it is reasonable to assume the Tenant is particularly noise sensitive and that she may have unrealistic expectations regarding her right to the quiet enjoyment of her rental

unit. In reaching the conclusion that the Tenant may have unrealistic expectations regarding her right to the quiet enjoyment of her rental unit, I was influenced by the note the Tenant left the occupant in unit #308, in which she asked her to refrain from vacuuming between 10:30 a.m. and 1:00 p.m. I find this to be an unrealistic expectation.

Now that the occupant of unit #308 has received three written warnings regarding the noise from her television and/or music and the Landlord has recommended that the occupant use headphones or earphones, the Landlord may have an obligation to end the tenancy of the occupant in the rental unit #308 if the Landlord receives another substantiated complaint about noise from a television or music at this rental unit. I make no finding in this regard, however, as that is not an issue before me at these proceedings.

For the purposes of clarity, both parties are advised that a substantiated complaint would include a complaint from the Tenant which is accompanied by evidence that corroborates the noise level is unreasonable; the observations of a police officer or other independent party who has the opportunity to witness the noise level and conclude that it is unreasonable; the observations of an agent for the Landlord who has the opportunity to witness the noise level and determine if it is unreasonable; the observations of any independent party.

Conclusion

As I have found that the Landlord is acting reasonably in regards to the occupant of unit #308 and is, therefore, complying with the *Act*, I dismiss the Tenant's application for an Order requiring the Landlord to comply with the *Act*.

Section 67 of the *Act* authorizes me to award financial compensation when one party has not complied with the *Act*. As I have not concluded that the Landlord has failed to comply with the *Act*, I find that the Tenant is not entitled to financial compensation. This conclusion is based, in part, on my belief that the Landlord is taking reasonable steps to balance the rights and obligations of two tenants with opposing needs and expectations. I therefore dismiss the Tenant's application for a monetary Order.

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 02, 2012.

Residential Tenancy Branch