



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*, *Regulation*, or tenancy agreement and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

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.

Issue(s) to be Decided

The issues to be determined are whether there is a need for an Order requiring the Landlord to comply the *Act* and/or a term in the tenancy agreement and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that they have a written tenancy agreement and that they have a term in the addendum to the tenancy agreement that the complex is "adult oriented".

The Tenant stated that she understood this to mean that no children were permitted in the rental unit. The Tenant contends that the Landlord has breached this term of the agreement by allowing children to move into the complex.

The female Landlord stated that they understood this to mean that they would try to have adult tenants when possible but, given the current economic times in the area, they have elected to rent space in the residential complex to tenant(s) with children.

The Landlord and the Tenant agree that on April 18, 2012 the Tenant reported that she had been significantly disturbed by "Al", who is another occupant of the residential complex. The Tenant gave a detailed account of the disturbance which occurred after

they had a verbal disagreement regarding “Al’s” dog, which included “Al” looming over and coming in close proximity to her face and him banging on her door on two different occasions on the date of the disagreement. She stated that she feared for her safety as a result of the incident.

The Tenant stated that since the incident on April 18, 2012 “Al” has continued to disturb her right to the quiet enjoyment of her rental unit, details of which were provided at the hearing. She stated that she has not reported the subsequent disturbances to the Landlord as she does not believe the Landlord will respond to her complaints.

The female Landlord stated that after receiving the report of the incident on April 18, 2012 they discussed the incident with “Al”, who advised them that he was considering moving. She stated that she has received no further complaints regarding “Al”.

The Tenant stated that she and a third occupant of the rental unit attempted to meet with the Landlord to discuss their concerns but the Landlord refused to meet once the Landlord learned she was planning on attending the meeting. The female Landlord stated that they had made plans to meet with the third occupant at a restaurant; that the third occupant is a friend and relative by marriage; that shortly before they were to meet the third occupant advised them that he wished to discuss concerns about the complex and that the Tenant was going to join them. She stated that they cancelled the meeting as they did not believe it was appropriate to discuss problems with the tenancy at a public restaurant.

Analysis

Section 6(3) of the *Act* stipulates that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. I find that the term in the tenancy agreement that defines the residential complex as “adult oriented”, does not clearly communicate the intent of the term. I find that this term could be interpreted to mean that children are not allowed on the premises at any time; it could mean that the Landlord will make an effort to rent to occupants without children; or it could be interpreted to mean that the complex does not have services, such as a playground, for children. As the term does not clearly communicate the intent of the term, I find it is unenforceable, pursuant to section 6(3) of the *Act*. As the term is unenforceable, I dismiss the Tenant’s application for an Order requiring the Landlord to comply with this term of the agreement.

The *Act* provides tenants with the right to quiet enjoyment, which includes freedom from unreasonable disturbances. Historically, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord’s actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord’s power to control. These standards are being relaxed to include circumstances where

the landlord does not take reasonable actions to prevent other occupants from breaching the tenant's right to quiet enjoyment.

I find that the Landlord took reasonable steps to intervene in the dispute between the Tenant and "Al" when they spoke with him regarding the incident on April 18, 2012. In determining the steps were reasonable, I specifically note that the Landlord did not, in my view, have grounds to end Al's tenancy at this point based on the description of the incident on April 18, 2012 that the Tenant provided at the hearing.

A landlord cannot be held responsible for the actions of other tenants if they are not notified that a problem exists. In these circumstances the Tenant did not notify the Landlord that "Al" continued to disturb her after April 18, 2012. As the disturbances were not reported to the Landlord there can be no reasonable expectation that the Landlord could take reasonable actions to protect the Tenant's right to the quiet enjoyment of the rental unit.

In making this determination I have placed no weight on the fact that the Landlord refused to meet with the Tenant at a restaurant to discuss her concerns, as I find it reasonable that they would not wish to discuss these issues in a public location. I find that the Tenant remained obligated to inform the Landlord with details of her concerns, either in writing or by phone, if the Landlord refuses to meet in person.

As the Tenant has failed to establish that the Landlord has failed to respond appropriately to protect her right to the quiet enjoyment of her rental unit, I dismiss her application for an Order requiring the Landlord to comply with the *Act* in regards to the covenant of quiet enjoyment.

Conclusion

I find that the Tenant's Application for Dispute Resolution has been without merit and I dismiss her application to recover the cost of filing this Application for Dispute Resolution.

Dated: May 17, 2012.

Residential Tenancy Branch