



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOUNT BENSON SENIOR CITIZENS HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, RP

Introduction

This hearing was scheduled to deal with a tenant's application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; Orders for the landlord to comply with the Act, regulations or tenancy agreement; and, Orders for the landlord to make repairs to the rental unit or property.

Preliminary and Procedural Matters

Each party had submitted one package containing evidence and written submissions prior to the service deadline established by the Rules of Procedure. However, the tenant submitted a second evidence package only one full day before the hearing date. The parties indicated they did not wish to adjourn the proceedings in order to consider the late evidence. Nevertheless, the tenant was adamant that her second evidence package be considered as it included statements from witnesses. I noted that in the late evidence package there were two documents to which the tenant was referring: one was an unsigned statement contained in an email; and, the other was a signed letter from a social worker who has not been to the rental unit. The tenant confirmed that the persons who authored the statements had not been asked to be available to testify at the hearing. I found the "witness statements" in themselves to be of little evidentiary value as the content of the written statements either: could not be verified or the content was not relevant to the dispute; and questions could not be asked of the persons who wrote the statements. Therefore, I did not consider the "witness statements" further in reaching this decision.

Issue(s) to be Decided

1. Has the tenant established an entitlement to monetary compensation from the landlord?
2. Is it necessary to issue Orders for compliance and/or repairs?

Background and Evidence

The landlord provides housing to low-income at-risk seniors and persons with disabilities. The residential property is a four storey apartment building of wood frame construction built in the early 1980's.

The subject tenancy commenced May 1, 2012 and the tenant is required to pay monthly rent of \$345.00. At or around the time this tenancy commenced a new tenant moved into the apartment directly above the tenant's unit (herein referred to as "411").

Starting in December 2012 the tenant began complaining about excessive noise coming from 411. At that time the mother of the tenant in 411 was visiting and when the tenant confronted the tenant of 411 his mother acted inappropriately toward the tenant. As a result, the landlord issued a warning letter to the tenant of 411.

In filing this Application, the tenant asserts that excessive noise continues to come from 411. The tenant described the noise as a banging, dragging, buzzing, and dropping things. The tenant stated that she can tolerate the noise during the waking hours; however, the noise is intolerable between the hours of 11:00 p.m. and 8:00 a.m. when she is trying to sleep.

The tenant acknowledged that she is very sensitive to noise and that after she is awoken by a noise she has great difficulty falling back to sleep. In making complaints to the landlord the landlord's response has been to request the tenant phone the landlord whenever she is disturbed by excessive noise. The tenant had been doing so, at times, but found the landlord's response inadequate. For instance, upon making a complaint to the landlord the landlord's representative would attend her unit for five minutes only and then leave when nothing more was heard or the landlord's representative would stand outside the 411's door and listen for noise.

The tenant submitted that listening in her unit for five minutes or listening outside the door of 411 is inadequate as the noises occur on an intermittent basis, sometimes a couple of hours apart, and the noise travels straight down from 411 so that the noise would not be heard by standing outside the door of 411.

The tenant stated that the landlord typically responds to the tenant's complaints by attributing the noise to daily living activity. The tenant acknowledged that many of the sounds may be from daily activity; however, the tenant was of the position that it is illegal to make such noises after 11:00 p.m. and before 8:00 a.m. The tenant was unable to point to a specific law that prohibits a person from performing daily activity

between certain hours. Whatever the source of the noise, the tenant submitted that she has suffered a loss of quiet enjoyment which is directly attributable to the activities taking place in unit 411 and the landlord's inadequate response to the matter.

The tenant indicated that she seeks the following Orders or remedies:

1. The tenant be given a different rental unit in the building;
2. The tenant's rental unit be better insulated;
3. The tenant in 411 be made aware of the sounds that emanate from his unit;
4. An inventory of the equipment and possessions in 411 be made;
5. A procedure is put in place to facilitate the tenant's complaints and the landlord's response to the complaints;
6. The landlord spends an afternoon in the tenant's unit to listen to the noise that comes from 411.
7. The landlord spends more time in the tenant's unit when she complains of noise during the night.

With respect to the monetary claim, the tenant requested compensation equivalent to all of the rent she has paid since December 2012 and for the months of March and April 2013 the monthly rent be doubled. The tenant explained that her monetary claim is intended to motivate the landlord to take action and to take into account she has spent several nights sleeping elsewhere.

The landlord does not refute that the tenant can hear noises coming from 411 and acknowledged that noise transfers quite easily within the building. Accordingly, all tenants are asked to be respectful of other occupants such as not leaving their bathroom fans running.

Despite attempts to investigate the tenant's complaints the landlord has not found evidence that the noises the tenant complains of are coming from 411 or that the noises coming from 411 are anything other than noise associated with daily living activity, with the exception of one time when the tenant in 411 was heard talking loudly on the telephone from the hallway.

The landlord explained that it does have a procedure in place for tenants to make complaints and when the tenant has called to report an unreasonable disturbance a representative for the landlord has attended to determine what can be heard. However, the tenant has not consistently called to complain when she hears an unreasonable noise and unless the tenant complains about the noise that is disturbing her it is difficult

to ascertain whether the tenant is being disturbed by something that is unreasonable; the landlord has control over; or, whether it attributable to the tenant's disability.

The landlord has also increased patrols of the hallways to monitor noise levels and take action where necessary.

In response to the tenant's specific requests, the landlord provided the following responses:

1. The landlord has a long standing policy to not permit transfers between units as this interferes with the landlord's ability to provide housing low-income and at-risk seniors and persons with disabilities when needed.
2. The rental unit was constructed to the building standards established at the time of construction and it is possible the noise is not only coming from 411. There is an exit door, a stairwell, other units, a railway and other buildings nearby that may all be sources of noise.
3. The landlord has already had several discussions with the tenant of 411 about noise transference and that tenant assures the landlord he is not making excessive noise. He has even gone so far as to wear double layers of socks to soften the sound of walking.
4. The landlord has taken an inventory of the items in 411 and found it to be sparsely equipped and not containing equipment that would generate some of the types of noise the tenant complains of.
5. The landlord has a procedure in place to deal with noise complaints; however, it requires the complainant to make consistent and timely complaints.
6. The landlord expressed concerns about the landlord's male representative being in the rental unit and doubted that this exercise would demonstrate noises from within the building are beyond that of normal daily activity.
7. The landlord was prepared to spend an hour in the tenant's rental unit upon receiving a complaint to see if the noise was repeated.

The landlord is of the position the tenant's monetary claim is unwarranted given the tenant has had full use of her unit and the landlord has investigated the tenant's noise complaints when they have been made. The sounds associated with cooking, using the bathroom or showering, talking on the phone and walking are not activities the landlord can prohibit the tenant in 411 from doing, even if it is at night.

Analysis

The Act applies to landlords and tenants who have entered into a tenancy agreement for a rental unit on residential property. A rental unit is defined by the Act to mean “living accommodation”. While the Act does not define the term “living accommodation” I find that by way of the ordinary meaning of the words “living accommodation” a rental unit is intended to be used to accommodate normal living activity. Thus, every tenant has the right to use their unit to carry out activities associated with normal living activity such as: sleeping, cooking, bathing, reading, watching television, socializing, and the like.

Under section 28 of the Act, every tenant is also entitled to quiet enjoyment of their unit. The right to quiet enjoyment includes the right to “freedom from unreasonable disturbance”.

Section 47 of the Act provides that where a tenant has unreasonably disturbed another occupant of the residential property the offending tenant may have their tenancy ended by the landlord serving them with a 1 Month Notice to End Tenancy for Cause.

In light of the above and when read as a whole, the Act gives a tenant the right to use their unit for living activities but the tenant may not unreasonably disturb other occupants in doing so.

It is important to note that the word “unreasonable” or “unreasonably” appears before the word disturbance or disturbed in sections 28 and 47. Accordingly, a mere disturbance or disturbances that are to be reasonably expected is insufficient to find a breach of quiet enjoyment or warrant an end to a tenancy.

When noise comes from normal daily activities such as cooking, walking, and using the bathroom, such noises are not unreasonable. Rather, they should be expected, especially in multiple unit buildings of wood frame construction where noise transference is greater than in other types of buildings. Nor is there a requirement that all daily activity be conducted before 11:00 p.m. or after 8:00 a.m., as suggested by the tenant. If that were the case, many night-shift workers or early-risers would find themselves facing eviction.

Considering the above, noise from within the residential property becomes an issue for the landlord when the noise is unreasonably disturbing a tenant. Where a landlord stands idly by and permits others to unreasonably disturb the tenant the landlord may be found to be in breach of the tenant’s right to quiet enjoyment. Thus, upon receiving a

complaint from a tenant it is important for a landlord to investigate the complaint so as to determine the source, whether it is unreasonable, and to take appropriate action where necessary.

Based upon the evidence presented to me, I am satisfied the landlord has not sat idly by and permitted another tenant to unreasonably disturb the tenant. I make this determination considering:

- The tenant has not provided sufficient and verifiable evidence to establish the noise she is hearing is:
 - coming from unit 411;
 - the tenant in 411 is doing anything other than normal daily activity in his unit; or,
 - that the noise coming from activity in 411 is greater than what a reasonable person would expect to hear from such activity in this building.
- The landlord has attended the rental unit upon receiving complaints from the tenant.
- The landlord has listened for noise from the rental unit and outside unit 411.
- The landlord has increased patrols of the hallways.
- The landlord has taken an inventory of the items in 411 in an attempt to determine sources of noise.
- The landlord has had a number of discussions with the tenant 411 about noise transference.

While I am satisfied the landlord has not sat idly by and permitted the tenant to be unreasonably disturbed, I accept that more can be done to investigate and deal with the tenant's ongoing concerns about noise transference. Therefore, I order the following:

1. If the tenant requests, on a mutually agreeable date, the landlord shall spend one afternoon in the tenant's unit with the intention of listening for unreasonably disturbing noises in order to determine the source and location of the noise.
2. Upon being unreasonably disturbed the tenant must contact the landlord at the telephone number provided to the tenant for such purposes.
3. Upon receiving a complaint by the tenant under part 2. above the landlord shall attend the tenant's rental unit and remain there to listen for disturbing noise until such time: at least one hour has elapsed; until an unreasonably disturbing noise is heard by the landlord; or, when the tenant requests the landlord leave; whichever occurs first.

4. If the landlord determines the tenant is being unreasonably disturbed by another tenant, guest or occupant in the building, the landlord must take sufficient and appropriate action to remedy the situation.

By way of this application the tenant has requested repair orders and more specifically, the tenant requested that her unit be better insulated. Section 32 of the Act deals with a landlord's obligation to repair and maintain a rental unit. It provides, in part:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find I was not provided evidence to conclude the rental unit or the building violates a law that provides for health, safety or housing standards. Therefore, I am not satisfied the landlord has violated section 32(1)(a) of the Act with respect to insulation.

By virtue of paragraph (b) above, the Act takes into consideration that there are different construction methods attributable to the character of the building, such as four storey buildings being of wood frame construction versus a high rise that is made of steel and concrete. This part of the Act also takes into consideration that over time new building techniques and materials are developed but that as the building ages the landlord does not have to upgrade the building to incorporate those new techniques or materials. Thus, where a building was constructed to standards in effect at that time, upgrades to the building are not required unless there is a health, safety, or building standard law that requires such.

While the tenant may find the unit is unsuitable for occupation by her due to her sensitivity to noise and difficulty sleeping, I find insufficient evidence to conclude the unit or building was inadequately insulated when it was constructed or that there is a law requiring the insulation be upgraded.

For all of these reasons, I find the tenant has not established that the landlord has failed to repair and maintain in accordance with the requirements of section 32 of the Act and I make no repairs orders with this decision.

Considering the tenant has been provided a functional unit and the tenant has had use and occupation of her unit at all times, I dismiss the tenant's monetary claim against the landlord as I find she has not established a basis under the Act to receive compensation greater than the rent she has paid since December 2012.

Conclusion

I have dismissed the tenant's monetary claims against the landlord. I have dismissed the tenant's request for repair orders. I have, however, issued other orders to both parties with this decision.

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: June 14, 2013

Residential Tenancy Branch