



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: OLC
For the landlords: FF O

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenant applied for an order compelling the landlord to comply with the *Act*, regulation or tenancy agreement.

The landlords applied for “other” which the landlords clarified was a request to have this dispute resolved, and the recovery of their filing fee.

The landlords and tenant attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Settlement Agreement

During the hearing, the parties agreed to the following during the hearing:

1. The landlords agree to ensure that from the date of the hearing, May 29, 2013 forward, the tenant’s vehicle will not be blocked in or out of the parking area.

2. The landlords agree to release the tenant from the fixed term tenancy early **if the tenant provides the landlords with one month written notice as required for a month to month tenancy.**

I order the parties to comply with the terms of their settlement agreement pursuant to section 63 of the *Act*.

Preliminary and Procedural Matters

At the outset of the hearing, the landlords clarified that their request for “other” in their application was a request to have this dispute resolved. In the matter before me, only the tenant’s application has a dispute to resolve and because of that, the landlord’s application was not necessary under “other”. Therefore, **I dismiss** the landlord’s application as their application is not seeking remedy under the *Act*. Furthermore, **I do not grant** the landlords the recovery of their filing fee as their application was not necessary.

As the tenant’s parking concerns were addressed through a settlement agreement, I will not consider the tenant’s claim related to parking further. I note the tenancy agreement includes “parking for 1 vehicle”, however, the tenancy agreement does not specify that a specific parking area is reserved for the tenant only. The parking area is shared between the landlord, the tenant and guests of both the tenant and the landlord.

Issue to be Decided

- Has the tenant submitted sufficient evidence that would result in the landlords being ordered to compel with the *Act*, regulation or tenancy agreement?

Background and Evidence

A fixed term tenancy began on December 15, 2012 and reverts to a month to month tenancy after December 14, 2013. Monthly rent in the amount of \$800.00 is due on the 15th day of each month. A security deposit of \$400.00 was paid by the tenant at the start of the tenancy.

The tenant is claiming that the landlords have breached her right to quiet enjoyment, freedom from unreasonable disturbance, and reasonable use of the common property. The tenant is seeking an order to have the landlords compelled to comply with the *Act*, regulation or tenancy agreement.

The tenant testified that she is seeking that the landlord's children not be permitted to play hockey in the common area which includes the parking area. The landlords stated that the hockey net were there when the tenant viewed the rental unit, which the tenant did not dispute. The tenant also confirmed that she was aware the landlords had children before entering into the tenancy agreement.

The tenant testified that the "hockey is very loud" and is played during the afternoon during the day "sometimes for several hours". When the tenant was asked to provide specific times and dates when the children were playing hockey the tenant stated:

- April 20, 2013 – no time recorded
- April 21, 2013 between 3:00 p.m. to 4:00 p.m.
- April 27, 2013 morning (no specific time recorded)
- May 3, 2013 at 5:35 p.m. (no end time recorded)
- May 4, 2013 at 8:00 a.m. (no end time recorded)
- May 5, 2013 at 11:33 a.m. and noon (no end time recorded)
- May 6, 2013 at 9:59 a.m. (no end time recorded)
- May 15, 2013 at 5:14 p.m. (no end time recorded)
- May 18, 2013 at 2:06 p.m. (no end time recorded)
- May 19, 2013 at 10:05 a.m. and 10:30 a.m. (no end time recorded)
- May 23, 2013 at 8:25 a.m. and 7:00 p.m. (no end time recorded)
- May 25, 2013 at 9:00 a.m. (no end time recorded)
- May 26, 2013 at 11:04 a.m. (no end time recorded)

The landlords disputed the tenant's testimony by stating that on May 4, 2013 for instance, the landlords and their children were not at home as they were away out of town. The tenant responded by claiming that other children in the neighbourhood must have come to play hockey when the landlords and their children were away on that day. The tenant stated that she is concerned that her car may be damaged from the children playing hockey but denied that her car has been damaged. The landlords dispute the tenant's claim by stating that the noise from the children is reasonable and is normal noise from children playing outside and is to be expected.

The tenant also claims that the landlords' dog "barks at everything" and that she does not like dogs. When asked to provide specific details, the tenant stated that between March 5, 2013 and March 7, 2013, the tenant's client walked up the driveway and was scared by the landlords' dog. The landlords disputed the tenant's testimony by stating that their dog is 13 years old and is friendly and does not bark as much as the tenant claims. The tenant also claimed that the landlords' dog barked on May 1, 2013 at 8:30

p.m. but did not indicate for how long and did not provide any supporting evidence such as witnesses or other supporting evidence. The tenant did confirm that she was aware the landlords had a dog before entering into the tenancy agreement. The landlords also dispute that their dog has impacted the tenant or her guests as their dog is old and does not bark as much as the tenant has claimed.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

The tenant is claiming that the landlords have breached her right to quiet enjoyment, freedom from unreasonable disturbance, and reasonable use of the common property. The tenant is seeking an order to have the landlords compelled to comply with the *Act*, regulation or tenancy agreement.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 28 of the *Act* states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) **freedom from unreasonable disturbance;**
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) **use of common areas for reasonable and lawful purposes, free from significant interference.**

The tenant claims that children playing hockey in the common area and the landlords' dog has impacted her right to quiet enjoyment. The landlords dispute the tenant's claim by stating that the noise from the children is reasonable and is normal noise from children playing outside and is to be expected. The landlords also dispute that their dog

has impacted the tenant or her guests as their dog is old and does not bark as much as the tenant has claimed. The tenant provided dates and times where the children were playing hockey but failed to document the end times of the hockey. As a result, the period of time the children were playing hockey was not proven during the hearing. The tenant provided no supporting statements from the person she claimed was disturbed by the landlords' dog, and also failed to provide the length of time the landlords' dog would bark for. In addition, the tenant only provided two separate occasions where the landlords' dog allegedly disturbed her. The landlords disputed that they have breached the tenant's right to quiet enjoyment.

While the landlords acknowledge that their children play hockey in the common area, the landlords' stated that the noise is reasonable and to be expected from children. The landlords' stated that the tenant was aware that they had a dog before entering into the tenancy which the tenant confirmed. The landlords' stated that their 13 year old dog is friendly, and does not bark as much as the tenant claims.

Based on the evidence and testimony in the matter before me and on the balance of probabilities, **I find** that the tenant knew the landlords had children before entering into the tenancy agreement, and that daily noise from the children playing hockey outside in the common area is reasonable, and constitutes reasonable noise. **I find** that the tenant was also aware that the landlords had a dog before entering into the tenancy agreement.

The onus of proof is on the tenant to prove that the landlords breached her right to quiet enjoyment. The tenant did not call any witnesses and failed to provide sufficient evidence to prove that the landlords' breached her right to quiet enjoyment. Based on the above, **I find** that the tenant has failed to provide sufficient evidence that the landlords have breached the *Act*, regulation or tenancy agreement. Therefore, **I dismiss** the remainder of the tenant's claim in full due to insufficient evidence, without leave to reapply.

Conclusion

I order the parties to comply with the terms of their settlement agreement discussed earlier in this decision.

I dismiss the remainder of the tenant's application due to insufficient evidence, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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