



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

The tenant applies for an order that the landlord comply with the Residential Tenancy Act or the tenancy agreement.

Issue(s) to be decided

1. Is it appropriate to order the landlord comply with the Act or the tenancy agreement?

Background and Evidence

1. This tenancy began June 1, 2010. Rent is \$780.00 per month, payable on the first day of each month.
2. The tenant alleges she has not slept properly for 3 years, on account of noise made by the tenants in the unit immediately above hers. She described being awoken by the sound of things being dropped, and “crashing” on her head. She believes the male tenant above has been falling out of bed. She was previously disturbed when he revved up his motorcycle. Music is played loudly. She can hear every footfall he makes. The tenants drag their washing machine across the floor to do laundry, and occasionally this occurs at night. The kitchen smoke detector regularly has been going off. The bathroom fan has been left on all night sometimes, and the vibrations disturb the tenant.
3. The landlord testified that the tenant upstairs is a large man, of about 260 lbs. He has not ridden his motorcycle for over a year, since his motorcycle accident. His wife is very ill with cancer. The landlord has asked the upper tenants to clean the fans in both the kitchen and bathroom areas. This has resulted in no further fan noise, and the smoke detectors no longer go off. The landlord has asked the upper tenant to wear slippers when walking about. The building is a wood frame construction however, and there are laminate style floors installed, and it is inevitable that some sound will travel. The landlord has offered to the tenant to come to her unit, to listen to any unreasonable noises that bother her. Whenever the tenant complains about anything, he will reply. No one other than the tenant has complained about noise by the upper tenant, excepting a complaint about his motorcycle made 2 years ago. The upper tenant has agreed that he will do laundry only on Saturdays. The landlord is also willing to install carpet in the upper unit, to help further reduce noise transfer.

Analysis

I am asked to determine whether the landlord has breached the implied covenant of quiet enjoyment in this tenancy agreement, and the statutory obligation to provide a tenant quiet enjoyment and freedom from unreasonable disturbance, found in the section 28 of the Act. In making such a determination, I must take into consideration the seriousness of the situation, and the length of time over which the situation has existed, and the actual steps taken by the landlord.

The covenant of quiet enjoyment promises that the tenant shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with the tenancy for all usual purposes. Every tenancy agreement contains an implied covenant of quiet enjoyment. In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that renders the premises unfit for occupancy for the purposes for which they were leased. Frequent and ongoing interference (by way of omission) by the landlord may form a basis for a claim of a breach of the covenant of quiet enjoyment, such as the failure by the landlord to take adequate steps to control unreasonable and ongoing noise made by another tenant.

On the other hand, it is necessary to balance the tenant's right to quiet enjoyment with other factors that may be out of the landlord's control. For example, tenants must expect a certain amount of everyday noise in a building, whether from mechanical equipment or from other tenants.

In a case where a tenant has notified the landlord of ongoing noise disturbances, a landlord must follow up with appropriate steps. In this case, I accept that the landlord has taken steps on a timely basis to address concerns raised by the tenant. The cleaning of the fans, for example, has helped reduce noise, vibration, and has alleviated the problem of the triggered smoke alarm in the kitchen.

The steps taken to date by the landlord have been an appropriate response to the problem. I find that the further solution proposed by the landlord, to install carpeting in the upper unit is also a reasonable response. It was also be appropriate for the landlord to notify the upper tenants in writing that no laundry shall be done in their unit between 9:00 pm and 8:00 am. I direct that the landlord follow up with these steps immediately. Should the upper tenants provide any resistance, the landlord should advise them that these steps are a requirement of their continued tenancy, and have been ordered by me.

Notwithstanding the orders made above, which are made with the landlord's consent, it is my view that the disturbances to the tenant are not due in any way to the landlord's failure to take reasonable steps to comply with the Act or tenancy agreement. It is

important for the tenant to accept the fact that sound transfer will be inevitable in her suite, given the nature of the unit she has chosen to rent.

Conclusion

The landlord will make some corrective measures to further reduce disturbance to the tenant. Given that the landlord has not been found to be in breach of his responsibilities, I decline to order that the tenant recover her filing fee from the landlord.

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 13, 2013

Residential Tenancy Branch