



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LUCKY ZA INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FF

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

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

Background and Evidence

1. This tenancy began February 1, 2013. Rent is \$1,725.00 per month, payable on the first day of each month. The tenancy is for a fixed term of 1 year.
2. The root of the dispute is that the rental premises has little or no prevention from sound transfer, and the slightest noise transfers, such as the dropping of a TV remote, or walking to the washroom at night, awakens the landlord (who is also the building manager), who resides directly below the tenant.
3. The tenant alleges that even though she and her co-tenant are most reasonable and cautious with respect to making any sound at night, the landlord has chosen to harass them over the issue of noise made at night. The landlord has threatened eviction at least 4 times, and has sent letters, emails and text messages. The landlord has scheduled a mandatory meeting with virtually no notice, and has stated the failure to attend will result in eviction. The landlord has made reference to the monitoring of the tenants through security cameras, has sent text messages in the middle of the night, and has continued to send text messages after being told to stop.
4. The landlord acknowledges having referenced footage from security cameras, but denies there is any improper use of the camera. He uses text messages and email messages, because on one occasion when he went to the tenant's premises, the door was not answered. He has not used abusive language, and does not believe his correspondence is threatening. He notes that the tenancy agreement specifically requires tenants to recognize the sound transfer issues of the old building, and be attentive to making as little unreasonable noise as possible at night.

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 the landlord may form a basis for a claim of a breach of the covenant of quiet enjoyment. In some cases, a breach arises when a landlord fails to take adequate steps to control unreasonable and ongoing noise made by another tenant. In the present case, the opposite is alleged to have occurred, and it is contended that the landlord has been overly aggressive and intimidating in trying to control any noise made by the tenant.

In a typical case where a tenant has notified the landlord of ongoing noise disturbances, a landlord must follow up with appropriate steps. In this case, the issue is more complex since the landlord himself is both an occupant as well as the landlord. It is difficult in such situations for a landlord to discern what is his role as a landlord, from his personal annoyance at being awakened by innocuous noises emanating from the unit above.

Having considered all of the testimony and evidence submitted, I find that the steps taken to date by the landlord have exceeded what is reasonable under the circumstances. For example, the threatening of eviction if the tenant fails to attend a mandatory meeting with only one day's notice, is an act of intimidation. The reference to having observed the co-tenant on the security video is highly suggestive of excessive vigilance, and as such is an act of intimidation. The sending of a text message to the tenant in the middle of the night, and continuing to send text messages when told to stop, is an act of harassment. The repeated reference to a possible eviction is an act of intimidation. When these various steps are combined, I agree that they have become harassment, and a breach of the tenant's right to quiet enjoyment, and her freedom from unreasonable disturbances by the landlord.

The clause in the tenancy agreement identifying that the building is old and that care and reasonableness must be taken not to disturb others, does not mean that the landlord is entitled to remind the tenant of noise issues every time a noise occurs.

The landlord in this case has failed to convince me that the alleged noises made by the tenant have been unreasonable under the circumstances, or warrant the level of response that has occurred. On the contrary, the landlord as occupant must also acknowledge that the building is old, and that on occasion, he will be awoken by ordinary noises from the upstairs tenant. Like all other occupants in the premises, he must expect and live with a certain level of noise that will inevitably occur in an old building.

Conclusion

The landlord must comply with the act and tenancy agreement, and cease from acts of intimidation or harassment of the tenant. As the tenant has been successful in this application, I order that the tenant recover her filing fee from the landlord. The tenant is entitled to recover such sum by deducting the sum of \$50.00 from a subsequent rental payment.

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: July 25, 2013

Residential Tenancy Branch