



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Souther Bocking Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage and to recover the fee for filing 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 submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Due to the volume of documents submitted as evidence, and the questionable relevance of some of those documents, the parties were advised that if they should bring documents that are particularly relevant to the issues in dispute to my attention if they wished them to be considered in my decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for lost revenue and the cost of hiring a management company?

Is the Tenant entitled to compensation for loss of the quiet enjoyment of the rental unit?

Background and Evidence

The Landlord and the Tenant agree that the Tenant moved into the lower rental unit of this residential complex on August 01, 2011; that the Tenant was required to pay monthly rent of \$1,200.00 by the first day of each month; and that the Tenant vacated the rental unit on August 16, 2012.

The Landlord and the Tenant agree that a new occupant moved into the upper rental unit and that in February of 2012 the Tenant first reported that she was being disturbed by the new occupant. The parties agree that the Tenant reported this concern on several occasions. Copies of emails were submitted that clearly show the concerns were reported to the Landlord on several occasions.

The female Tenant stated that shortly after the new occupant moved in she was disturbed every day around 6:00 a.m. by the noise of "stomping", which she believes was deliberate, children running, children jumping, and loud talking. The male Tenant stated that in addition to these noises he has also been disturbed by a loud television during the evening, sometimes as late as 2:00 a.m.

The Landlord stated that she spoke with the upper occupant and the occupant stated that she would ask her children to remove their shoes and to refrain from running; that she spoke with the children living upstairs and they told her that their mother has asked them to walk quietly and to refrain from running; that the Landlord established "house rules" which were intended to minimize the conflict between the upper and lower occupants; that there was an area carpet covering a portion of the hardwood floor in the living room when the upper occupant moved in; that she asked the upper occupant to lay an area carpet in the hallway, which has hardwood flooring; that in March of 2012 she confirmed that a carpet had been installed in the hallway; that the upper occupant was asked to install pads under her dining room chairs; and that in April of 2013 she provided the Tenant with an area carpet for under the dining room chairs, which was intended to reduce the noise from chairs being scraped on the floor.

The female Tenant stated that none of the actions taken by the Landlord appeared to have impacted the noise disturbances. She stated that the upper occupant continued to use the laundry facilities after midnight, about five times per week, in contravention of the "house rules".

The female Tenant stated that the Landlord did not confirm that a rug had been placed in the hallway or that pads were placed on the dining room chairs. She stated that she

has been provided with no proof that a rug was placed in the hallway and that there was only an 8' X 10' rug in the living room. The Tenant submitted an email from an agent for the Landlord, in which the agent informs the Tenant that there is a carpet in the hall. In a reply to this email the Tenant stated that the "little rug in the hall" and the "area rug in the living room" is not "what I call carpeting".

The female Tenant stated that on about 20 or so occasions the Tenant was disturbed by guests in the upper rental unit, in which there was often loud music and talking. She stated that these concerns were periodically reported to the Landlord, via email, and on one Saturday afternoon she reported it by telephone to the management company, although a representative did not attend.

The Landlord stated that she also spoke with the upper occupant about noise from visitors and was told that on one occasion the upper occupant had an unplanned party where a couple of friends stayed overnight.

The Tenant contends that the Landlord could have protected her right to quiet enjoyment of the rental unit by adding insulation in the ceiling between the units.

The Tenant submitted a copy of a letter, dated June 05, 2012, in which the Tenant referred to the aforementioned noise disturbances. The Landlord agrees that the Tenant periodically reported the disturbances to the Landlord.

The Landlord submitted a copy of a letter from the upper occupant, who complained about being disturbed by the Tenant banging on her ceiling; that she and her children removed their shoes and tried to walk quietly; that on one occasion she had a gathering with four guests who stayed overnight; that she apologized once she learned she had disturbed the Tenant; that she put a rug in the hallway in an attempt to minimize the disruptions to the lower tenant; that on one occasion she was playing her music at a low level and the Tenant told her "unpleasantly" to turn off her music; that on one occasion the Tenant played bongo drums all night long; that on one occasion the female Tenant yelled at her mother and used a profanity; and that she moved out of the rental unit as a result of the on-going conflict with the Tenant.

The Landlord submitted an email from a third occupant of the residential complex, dated August 12, 2013, who was living in the complex under a third tenancy agreement. He stated that his suite was adjacent to the upstairs occupant; that he lived in this suite between January and November of 2012; that he never heard the upper occupant make noise; and that the Tenant was "constantly" complaining about noise coming from the suite of the upper occupant.

The Landlord is seeking compensation for the cost of hiring a management company to manage the conflict between the Tenant and the upper occupant, in part, because she was out of the city during this time for personal and professional reasons.

The Landlord is seeking compensation for lost revenue she experienced as a result of the conflict between the Tenant and the upper occupant. The Landlord contends that she permitted the upper occupant to prematurely end her fixed term tenancy as a result of the conflict between the Tenant and the upper occupant, which resulted in lost revenue in the upper unit.

Analysis

Section 28 of the *Residential Tenancy Act (Act)* entitles a tenant to the quiet enjoyment of a rental unit, which includes freedom from unreasonable disturbances. The issue before me is to determine whether the upper occupant has unreasonably disturbed the Tenant.

It is commonly accepted that unreasonable and ongoing noise is a breach of the covenant of quiet enjoyment. The question is how much noise can be considered unreasonable. Black's Law Dictionary, sixth edition, defines reasonable as "fair, proper, just, moderate, and suitable under the circumstances" and it defines unreasonable as "irrational; foolish; unwise; absurd; silly; preposterous; senseless; stupid".

It is clear that the Tenant is being disturbed by noises from the upper occupant's rental unit. The issue before me, however, is to determine whether that noise is unreasonably disturbing the Tenant or significantly interfering with the Tenant's right to quiet enjoyment. In these circumstances, I find that many of the noises that are disturbing the Tenant are noises associated to common daily living activities, such as walking, moving chairs, and listening to the television. While parents can attempt to educate their children and ask them not to run, children playing and, occasionally running, should also be considered noises associated to normal daily living. I do not find these noises to be unreasonable.

On the basis of the letter from the upper occupant, I accept that the upper occupant did, on one occasion, create an unreasonable amount of noise when she had a small gathering of people. I find that the Tenant has submitted no evidence to corroborate her testimony that a disturbance of this nature occurred on more than one occasion.

In determining whether or not the noises emanating from the upper occupant's rental unit were unreasonable, I was heavily influenced by the email from the occupant who was living adjacent to the upper occupant. As this occupant reported that he was never disturbed by noise from the upper occupant, I find that the noise was likely not unreasonable.

I find that the Landlord has taken appropriate and reasonable steps to address the concerns and complaints of the Tenant. The Landlord informed the upper occupant of the Tenant's concerns; the Landlord asked the upper occupant to alter her lifestyle; the Landlord provided the upper occupant with carpets; and the Landlord imposed house rules designed to minimize the conflict between the parties. With the exception of

making significant changes to the rental unit, I find that there is little more the Landlord could have done to resolve this conflict. In reaching this conclusion I was heavily influenced by my determination that the Landlord did not have grounds to end the tenancy of the upper occupant on the basis of the noise complaints being made, given that the other occupant of the residential complex was not being disturbed.

Policy suggests that a tenant may be entitled to compensation for the loss of quiet enjoyment if they are subject to frequent and ongoing disturbances by a third party, if the landlord has the ability to prevent the disturbances and the landlord does not attempt to intervene. Although I am not convinced the Landlord in these circumstances had the power to prevent the disturbances, I am satisfied that the Landlord took reasonable steps to intervene.

In determining that the Landlord took reasonable steps to intervene in this dispute, I was also influenced by the letter from the upper occupant, dated August 07, 2013. This letter corroborates the Landlord's testimony that attempts were made to resolve the Tenant's concerns. The letter also supports my conclusion that the noise emanating from the upper occupant's rental unit was not unreasonable.

For these reasons I find that the Tenant is not entitled to compensation for the loss of the quiet enjoyment of the rental unit and I dismiss the Tenant's claim for a monetary Order.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with health, safety, and housing standards, and having regard to the age, character, and location of the rental unit, makes it suitable for occupation. I am not aware of a building code or other legislation that requires insulation between upper and lower floors in a residential complex and the Tenant submitted no evidence of such a legal requirement for a dwelling of this nature. I therefore have no reason to conclude that the Landlord was legally obligated to install insulation in the ceiling of the rental unit.

I find that it is commonly understood that basement units in single family dwellings are typically noisier than upper units in a single family dwelling and are typically noisier than multi-dwelling residential complexes. While this is certainly an inconvenience of living in a basement unit, it is also an inconvenience the Tenant should have reasonably anticipated.

I note that there is nothing in the *Act* that requires a landlord to comply with zoning bylaws and I have therefore not addressed the allegation that the rental unit is an "illegal suite".

Managing conflict between parties in a residential complex is one of the many responsibilities of a landlord. Although this Landlord may have hired a management company as a result of increased workload created by Tenant and the upper occupant, I find that the Landlord is not entitled to transfer these operating costs to the Tenant. I

therefore dismiss the Landlord's claim for compensation for hiring a management company.

In the event the Landlord believed the Tenant was making it difficult to manage the residential complex, the Landlord had the right to attempt to end the tenancy pursuant to section 47 of the *Act*. In the event the Landlord did not have grounds to end the tenancy in accordance with section 47 of the *Act*, the Landlord was obligated to absorb the costs of managing the tenancy.

I find that the Landlord does not have the right to compensation from this Tenant as a result of the upper occupant prematurely ending her fixed term tenancy. In the event that the Tenant was interfering with the upper occupant's right to the quiet enjoyment of the rental unit, the Landlord had an obligation to attempt to end the Tenant's tenancy pursuant to section 47 of the *Act*. In the event the Landlord did not have grounds to end that tenancy in accordance with section 47 of the *Act*, the upper occupant would likely not have had the right to prematurely end her fixed term tenancy, in which case the upper occupant would be responsible for compensating the Landlord for lost revenue.

Conclusion

As neither the Landlord nor the Tenant has established the merit of their Application for Dispute Resolution, I find that neither party is entitled to recover the fee for filing an Application for Dispute Resolution.

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: August 27, 2013

Residential Tenancy Branch

