



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, RR, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for monetary order for compensation for noise disturbances and for an order to reduce rent. The tenant also applied for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord fulfilled her responsibilities as a landlord with regard to following up on the tenant's complaints?

Background and Evidence

This fixed term tenancy started in October, 2012. Rent is \$900.00 due on the first of each month. The rental unit is an apartment located in an apartment building.

These parties attended a hearing by conference call on September 12, 2013 to address similar issues of noise disturbances. The landlord had followed up on the tenant's complaints but the problem was not fully resolved. During that hearing, the landlord agreed to continue to follow up until the tenant was satisfied that there were no more noise disturbances.

The tenant's complaints are regarding two neighbours. The neighbour in the front rents the unit and is a single parent with two children. The tenant stated that the neighbour is loud and yells at her children during the day. She also does laundry at night.

The neighbour at the back owns the unit and consists of a couple with two children. The tenant stated that the female occupant works an evening shift and upon her return around midnight, starts cleaning, the sounds of which disturb the tenant. The tenant stated that lately these sounds have stopped because the female occupant has changed her shift. However, the male occupant gets up at 5am to go to work and the noise from his movements disturbs the tenant.

The tenant stated that her health suffered due to the lack of undisturbed sleep and she provided a daily log of the noise disturbances. The landlord forwarded the tenant's logs

to the strata council. The landlord and two council members, who testified at the hearing as witnesses, visited the tenant on November 05, 2013 to discuss the problem. One of the council members requested the tenant to call her at the time of the disturbance even if it was during the night. This council member volunteered to attend any noise disturbance reported to her by the tenant, regardless of the time of the incident.

Since the meeting on November 05, the tenant called the council member once on November 17 at approximately 1:00pm in the afternoon. The member visited for about 30 minutes and stated that the noise heard could be compared to a rolling ball that was weighted. The noisy activity went on once for approximately 2 to 3 minutes.

During that visit on November 17, the council member agreed to come by the next morning at 5:15 am to investigate the disturbance that the tenant complained about. The council member returned the next day and knocked on the tenant's door at the appointed time. There was no response. The council member stated that both the tenant's unit and the offending unit were in darkness and there was no noise. The tenant stated that the neighbour did not go to work that morning and therefore she was not disturbed. She also did not hear the council member's knock on her door.

Other than the above two dates, the tenant did not call the council member to report any noise disturbances.

On November 19, 2013, a strata meeting was convened and the tenant was invited. The owners of both the offending units were also in attendance. Both council members who attended the hearing as witnesses were present at the meeting and testified that after listening to the tenant, it appeared that the issue was a personality conflict rather than a noise disturbance. The occupant of the back unit denied creating any disturbances.

The council members stated that they have been dealing with the tenant's complaints for several months, as brought forward to them by the landlord. They have sent warning letters and have fined the parties concerned. The council plans to conduct inspections of the flooring in the units to determine if they are in compliance with the strata by laws.

The landlord stated that she attended three strata council meetings and this issue was discussed for at least 20 minutes at each meeting. The landlord even offered to finance the laying of carpet with underlay inside the units in question, if the strata council would assist her in recovering her financing. The council refused to accept this proposal.

The landlord stated that she has done whatever she can to address the tenant's complaints and continues her attempts to resolve the problem. The landlord even

offered to allow the tenant to end the fixed term lease without penalty. In a letter to the tenant, dated October 17, 2013, the landlord outlined all the steps she has taken in her attempts to address the tenant's complaints and states "*I now truly believe that no matter what is done you will never be content*"

Analysis

The tenant's claim for compensation consists of \$1,500.00 for the fines that should have been levied on the two units that caused the alleged disturbances and \$162.19 for the cost of filing this application which includes the cost of parking. The tenant has also applied for a rent reduction of \$300.00 per month until the disturbances end.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. Section 6 of the *Residential Tenancy Policy Guideline*, also states that a landlord would normally not be held responsible for the actions of other tenants unless the landlord was notified of the problem and failed to take reasonable steps to correct it or prevent such conduct by other tenants.

I have reviewed the submissions of both parties and the testimony of the witnesses and I find that the landlord took immediate action after she received the tenant's complaint.

The tenant's testimony consisted of some noise disturbances associated with normal every day activities. The occupant of the back unit works in the early morning and wakes up at 5am and therefore noise disturbances caused by movements are not unexpected. The noise disturbances during the day may inconvenience the tenant, but are not in contravention of the strata quiet time policy.

The disturbance caused by the neighbor using the washing machine at night was addressed with the concerned neighbor, by the landlord via the strata council. The neighbor was issued a warning and a fine.

The landlord went the extra step by visiting the tenant along with two members of the strata council and the tenant was given the opportunity to contact one of the members at the time of the noise disturbance, regardless of the time of the incident. Despite having this remedy available, the tenant only called once and that was during the day.

Tenants renting a unit in a housing complex such as this are required to accept the fact that that they will hear noises from the adjoining units.

Based on the evidence and testimony of the parties and the witnesses, I find that the landlord did not breach the tenant's right to quiet enjoyment and therefore the tenant is not entitled to compensation. Accordingly the tenant's claim for compensation in the amount of \$1,500.00, which represents the fines that the council should have levied on the owners of the units that created the alleged noise disturbances, is dismissed.

The legislation does not permit me to award any litigation related costs other than the filing fee. Accordingly, the tenant's claim for \$162.19 for filing this application and parking is dismissed.

Based on the sworn testimony of both parties and the documentary evidence in front of me, I find that the landlord has in the past acted responsibly and responded to the tenant's complaints in a timely manner. I also find that the tenant has not availed herself of the remedies offered to her and appears to be a habitual complainer which reduces the validity of her complaints. Accordingly, I dismiss the tenant's claim for a reduction in rent.

I find that the tenant has not proven her case for compensation for the loss of quiet enjoyment and accordingly must bear the cost of filing her application.

Conclusion

The tenant's application is dismissed in its entirety.

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: November 22, 2013

Residential Tenancy Branch