



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with an application by the tenant for an order that the landlord comply with the legislation, regulation, or tenancy agreement.

The tenant served the Application for Dispute Resolution and Notice of Hearing by posting it to the door of the resident manager's unit. The tenant testified that two days after he posted the documents the resident manager spoke to him and told him he had received it. The tenant's application has also been discussed in subsequent conversations between the parties. The landlord did not appear at the hearing.

Issue(s) to be Decided

- Was the Application for Dispute Resolution and Notice of Hearing properly served?
- Should an order be made against the landlord and, if so, on what terms?

Background and Evidence

This tenancy commenced June 1, 2013 as a 14 month fixed term tenancy to continue thereafter as a month-to-month tenancy. The monthly rent of \$950.00 is due on the first day of the month.

The rental unit is a large one bedroom apartment located on the second floor of a three story, frame-construction building. The tenant described the building as being at least 100 years old. The interior walls are lath and plaster. The ceilings in this unit are ten feet high. The tenant described the unit as having big windows, lots of sunshine, and a nice view.

The tenant testified that the current owner of the building has completed many renovations to the building including a new roof and new boilers. He described the building as being well maintained.

The tenant likes everything about living in this unit with one exception – the noise from the tenant above him.

According to the tenant there is no noise transfer between the walls of the building, either from the adjoining units or the hallway. In addition, the floor plans of the suites are effective in buffering sound transfer from the adjoining units or the hallway.

However, there does not appear to be much insulation between the floors. This situation is made worse by the fact that the upstairs unit has hardwood floor which that tenant has left bare.

The tenant is on a disability pension. His roommate delivers papers every night and the tenant helps him with this task.

The tenant of the unit directly above the tenant's unit has lived there for about five years. According to the tenant that gentleman is lives alone, is middle-aged and works as a teacher.

Each unit has a very different schedule. The tenant and his roommate sleep from 9:00 pm to midnight; leave for work at 1:00 am, return from work at 4:30 or 5:00 am; and sleep after that. By contrast the upstairs tenant gets up around 6:30 am; leaves for work about an hour later; returns home around 5:00 pm; and goes to be around midnight or 1:00 am. The upshot is that the upstairs tenant is getting ready for work or engaging in his evening at-home activities at the same times as the tenant and his roommate are trying to get to sleep.

The tenant did speak to the upstairs tenant and the building manager about the volume of the neighbour's music and other noises. The building manager has spoken to the upstairs tenant. He also suggested that the tenant turn up his television or music.

The tenant says that after a while the neighbour's music has decreased and the evenings have gotten quieter. In addition, the tenant and his roommate have gotten headphones for their television. The tenant says that other noises from upstairs are problematic from time to time. He described periods of loud stomping, door slamming and other loud movement noises interspersed with periods when the upstairs tenant is so quiet they don't know that he is home.

The tenant said they spoke to the people who live in the unit below them. They were told that the only noise the downstairs tenants hear from them is the creaking of the floors.

The landlord has offered the tenant and his roommate another suite in the same building, at the same rent. The tenant described this unit as being darker, with lower ceilings, not as nicely finished and with no view. They do not want to move to this unit.

Analysis

Section 89 of the *Residential Tenancy Act* sets out the methods by which an application like this may be served on landlord by a tenant. Posting is not one of them. However, in light of the decision I have made after considering all of the tenant's evidence I have decided to render a decision rather than dismiss the application with leave to re-apply.

It is important to note that the tenant has not asked for any financial compensation for loss of quiet enjoyment; only some direction to the landlord that would reduce the sound transfer from upstairs to downstairs.

The issue of sound transfer in old buildings is always difficult because there is only so much a landlord can do with a particular type of construction. It is even more difficult when neighbours are on diametrically different time tables. This combination of circumstances makes it difficult for a landlord who is trying to keep all their tenants happy.

It is noteworthy that at times the upstairs tenant can be very quiet. The tenant suggests there may be some element of intention behind the periods of louder noise. I am not prepared to draw that conclusion but it does illustrate to all parties, including the building management, that the transference of sound from the upstairs unit to the downstairs unit is not inevitable.

The tenant had hoped that the landlord would convince the upstairs tenant to install area carpets, wear softer shoes or make a greater effort to be quieter. I am not prepared to make any order against the landlord at this time. However, I would suggest that the landlord consider the fact that the upstairs tenant can be quiet for long periods of time and explore how that quiet has been achieved when trying to mediate between these tenants.

Conclusion

The tenant's application is dismissed.

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: December 05, 2013

Residential Tenancy Branch

