



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RR, MNDC, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on March 3, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?
- c. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation or tenancy agreement.
- d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on October 1, 2013 when the parties entered into a 6 month fixed term tenancy that became month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$800 per month plus \$10 additional parking payable on the first day of each month. The tenant(s) paid a security deposit of \$400 on September 16, 2013.

The Application for Dispute Resolution seeks a monetary order in the sum of \$1230. The claim alleges that he was been unable to sleep for approximately 12 nights per month since moving in because of noise and disturbances from the tenant who lives immediately above him. The disturbances are caused by the large dog of the upstairs tenant who thumps around and bangs in the bedroom located above him at all hours of the night. He testified he advised the landlord of the disturbances on October 7, 2013 and over 12 other times throughout the tenancy.

The tenant referred to various provisions in the tenancy agreement prohibiting noise after 10:00 p.m. and not disturbing others. The tenant suggested the dog was a young boxer who was not getting sufficient exercise during the day. The dog would chase a cat. The tenant also testified that on many occasions the dog would significantly disturb him by barking.

He further testified that he advised the landlord of the noise problem but the landlord failed to take steps to deal with the problem. On one occasion he telephoned the landlord 3 times during the course of the evening but the landlord failed to respond and attend to confirm his complaints. The landlord testified she did not hear the telephone call.

The tenant also sought compensation for the cost of showering at a location outside of the building after the hot was shut off for 4 days. The landlord testified the hot water was shut off for the building for 2 days only.

The landlord disputed the tenant's complaints. She testified she was advised 4 or 5 times during the course of the tenancy and that each time she attended the upstairs tenant to attempt to resolve the problem. When she attended the upstairs tenant made efforts to comply to reduce the noise. On other occasions the upstairs tenant told her that she had been home all evening and her dog had not caused a problem.

The landlord testified that in early December in an effort to resolve the problem she offered to move the tenant to another vacant rental unit at the landlord's expense. She asked the tenant to call her so that they could discuss it further but the tenant failed to call her. The Tenant testified that the landlord did not offer to pay for his move. Further, he was suffering from medical problems and was not up to making the move.

Witness 1, the upstairs tenant testified as follows:

- Her dog is 8 years of age and is not a young puppy.
- She denied allowing her dog to run around in the bedroom at night. When advised of the problem by the landlord she moved into the living room with her dog.
- The rental property is a wood frame building and you can hear sounds from all over the building.
- She would leave her dog in a crate when she went off to work and she gave her dog plenty of exercise.
- On some of the occasion the tenant complained of she and her pet were not in the rental property.
- She was threatened by the tenant. As a result she gave the landlord notice at the end of February to be effective the end of March. She vacated the rental unit around March 10 or 11th.

Witness 2, another tenant in the rental unit testified as follows:

- She has been a friend of Witness 1 for 6 years.
- On occasion she would take care of the dog. She has never heard the dog bark.

- The building is not sound proof and she can hear her neighbours speaking.

Section 28 of the Residential Tenancy Act provides as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

...

(b) freedom from unreasonable disturbance;

Policy Guideline 6 includes the following statement:

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

.....

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it. A landlord would not be held responsible for interference by an outside agency that is beyond his or her control, except that a tenant might be entitled to treat a tenancy as ended where a landlord was aware of circumstances that would make the premises uninhabitable for that tenant and withheld that information in establishing the tenancy.

Analysis:

I am satisfied on the basis of the evidence presented that the tenant has been significantly disturbed by noise coming from the upstairs suite. Further, I accept the evidence of the tenant that he advised the landlord on approximately 12 occasions culminating with a letter to her in February.

However, I determined this is not a situation with the landlord has stood idly by. I accept the evidence from the landlord that she talked to the upstairs tenants upon receiving the tenant's complaints. I also accept the evidence of the upstairs tenant that she attempted to reduce the noise. I have also considered the evidence that the landlord offered to move the tenant to another rental unit at the landlord's expense but the tenant failed to accept the offer. The upstairs tenant gave notice and vacated around the middle of March.

While the landlord has made some efforts to resolve the problem I am satisfied that a reasonable landlord would have done more. The tenant phoned the landlord on 3 occasions one night but the landlord failed to answer. I do not accept the evidence of the landlord that she did not hear the phone as she was sleeping. Further, I accept the evidence that the tenant told the landlord of the problem on approximately 12 occasions and not the 4 or 5 times the landlord stated. In my view a reasonable landlord would have been more proactive in dealing with the problem as it was apparent what was being done was not sufficient.

I determined the tenant is not entitled to the amount of compensation claimed. The noise disturbance was caused by a third party tenant. The landlord is not an insurer. The obligation on the landlord is to act reasonably to reduce and eliminate an unreasonable disturbance. In this case I determined that the action of the landlord in talking to the upstairs tenant and in offering to move the tenant to another unit was reasonable.

However, when the complaints continued it became apparent that steps taken by the upstairs tenant were not sufficient and the landlord should have taken steps to end the

tenancy of the upstairs tenant. In this case on a practical basis the earliest it could be expected that a landlord could have ended the tenancy of the upstairs tenant would have been January 31, 2014. The upstairs tenant gave the landlord notice she was vacating at the end of February to be effective the end of March. She left the middle of March. In the circumstances I determined the appropriate compensation is the sum of \$200 for breach of the covenant of quiet enjoyment. I also determined the tenant is entitled to \$30 for the loss of the reduced value of the tenancy for the weekend. .

Conclusion

I ordered the landlord(s) to pay to the tenant the sum of \$230 plus the sum of \$50 in respect of the filing fee for a total of \$280 such sum may be deducted from future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: March 31, 2014

Residential Tenancy Branch

