



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GALLEO INVESTMENTS (BC) LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, OPC, FF

Introduction

In his application, the Tenant seeks a monetary order from the landlord. The Tenant also seeks an order to cancel a One Month Notice to End Tenancy. The landlord in turn seeks for an Order of Possession.

At the hearing, the parties confirmed that the tenancy had ended, and there was no longer a claim to cancel the One Month Notice to End Tenancy, nor a claim for an Order of Possession. These matters were therefore dismissed as withdrawn.

Issue(s) to be decided

Is the Tenant entitled to a monetary order from the landlord?

Background and Evidence

1. This tenancy began January 1, 2007 and ended July 2, 2014. The Tenant's security deposit has been returned.
2. Another tenant moved into a neighbouring suite to the Tenant's suite in September, 2012. This adjoining tenant played music regularly in his suite. At times the bass was high, and at times the volume was high. At times the music continued into the late evening. The music bothered the Tenant and his girl friend, who could hear it through the wall adjoining the two suites. The Tenant or his girl friend began to complain to the adjoining neighbour, to the Landlord and to police about the music. Often when the landlord came to the premises, the music was either not playing, or was very quiet. Eventually the landlord came to assume that the Tenant was simply antagonistic towards the adjoining tenant, and then towards the Landlord and her husband.
3. The Tenant wanted the neighbour to stop playing music, but the adjoining tenant did not agree to discontinue playing his music. In his written statement, he alleges he suffers from PTSD, and his music is a necessary form of therapy.
4. Steps were taken to mitigate the problem. The adjoining tenant was informed as to the maximum level of volume his music could be set at, and the adjoining tenant for the most part adhered to this restriction. The Landlord also offered the

Tenant opportunity to move into a different suite in the building, but the Tenant declined.

5. The ongoing music, and the resultant ongoing complaints by the Tenant, led to frustration and conflict as between all the parties. The Tenant grew frustrated by the ongoing music being played. The Landlord considered the music to be at a reasonable level, and found the Tenant to be belligerent and bullying, in his incessant demands to stop the music.

Analysis

Both parties have provided written materials in advance of the hearing. Some of these materials purported to be statements of witnesses for the Tenant who wished to remain anonymous. These statements were not in affidavit form, and were not sworn to be true. There was no opportunity to cross-examine an anonymous witness or confirm their identity. Accordingly, I attach no weight to that portion of the Tenant's evidence, or to the Tenant's own summary of the subject statements.

I further note that there are allegations (and denials) of assaults and hostilities as between the parties. While of concern, these do not influence my determination as to the core issue raised by the Tenant, and I therefore decline to address these allegations.

It is the Tenant's contention that the landlord failed to take sufficient, reasonable or appropriate steps to control the ongoing noise of the adjoining tenant. In this regard I must determine whether the landlord has breached the implied covenant of quiet enjoyment in every 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 a 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 way of omission) by the landlord may form a basis for a claim of a breach of the covenant of

quiet enjoyment, such as the failure by the landlord to take adequate steps to control unreasonable and ongoing noise by another tenant.

On the other hand, it is necessary to balance the Tenant's right to quiet enjoyment with other factors that may be out of the landlord's control. For example, tenants must expect that others using the same building will make some noise in the daytime. Noise transfer within premises is a factor as well, and in some cases sound can transfer through walls and be bothersome, but little can be done to alleviate that sound transfer.

In a case where a tenant has notified the landlord of ongoing noise disturbances late at night, the landlord must follow up with appropriate steps. It is the landlord that has a contractual relationship with their tenants. A tenant has no contractual legal right to enforce their right to peace and quiet as against another tenant in the same building. While it is true that police can be called to provide temporary relief, as the parties have learned, that may not solve the noise issue on an ongoing basis. It is appropriate for landlords to take immediate steps upon learning that tenants are being disturbed unreasonably by other tenants. These steps include notifying the offending tenants as to their inappropriate conduct, warning them of the consequences of continued conduct that unreasonably disturbs other tenants, and if the problem continues and is severe, serving notice of the ending of their tenancy. The failure of a landlord to take these steps in a timely way would be a breach of the contractual covenant and statutory requirement that the landlord provide the tenant with quiet enjoyment.

In the present case, I accept that steps were taken in response to the Tenant's complaints about the neighbour's music. These included:

- Coming to the premises to determine the actual level of the music;
- Warning the adjoining tenant to keep his music quiet;
- Setting maximum levels for the adjoining tenant's music;
- Offering the Tenant opportunity to move to different suites in the building.

I accept that these steps occurred in a timely way. This is not a case where the Landlord failed to steps to control unreasonable and ongoing noise. While it is clear that the Tenant was bothered by the sound of the adjoining tenant's music, the Tenant has not proven on a balance of probabilities that the landlord's actions were a substantial interference with the ordinary and lawful enjoyment of the premises rendering the premises unfit for occupancy for the purposes for which they were leased. This portion of the Tenant's claim is therefore dismissed.

The tenant also claims to have suffered emotional stress as a result of abuse by the

landlord. I note that there is no requisite medical evidence to substantiate this claim, and I dismiss this portion of the claim as well.

As the Tenant's claim is unsuccessful, I also dismiss his claim to recover his filing fee from the landlord.

Conclusion

The Tenant's claim and the Landlord's claim are both dismissed in full.

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 11, 2014

Residential Tenancy Branch