



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This was the hearing of an application by the tenant for a monetary order and an order that the landlord comply with the *Residential Tenancy Act*, Regulation or tenancy agreement. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?
Should the landlord be ordered to take specific actions so as to comply with the *Residential Tenancy Act*, Regulation or tenancy agreement?

Background and Evidence

The rental unit is a strata title apartment in North Vancouver. The tenancy began in 2011. The tenant testified that since the spring of 2012 he has been disturbed by noise created by the occupant living in the penthouse apartment above his rental unit (hereinafter referred to as the “neighbour”). The tenant said that he was disturbed in the early morning by the sounds made by a chair scraping on the floor. The tenant spoke to the neighbour and gave him some sticky pads to put on the legs of his chair. The tenant said that the noise abated only briefly before he was again disturbed in the early morning by chair noises and heavy walking. The tenant, who plays and teaches a musical instrument, said that the neighbour knocked on his door one afternoon when he was practising a difficult piece of music, to ask if he would “play a different song”. The tenant said that he was surprised that the neighbour could hear his playing since the building was made of concrete. The tenant testified that he discussed the matter with his neighbour and agreed to limit his playing to specific hours. He said that the neighbour agreed to stop making noise, but instead noise from upstairs continued as before.

The tenant said that he brought more felt cushions to the neighbour for his chairs, but the neighbour was hostile and threw the pads back at the tenant. He swore at the tenant and said that he was not going to change his habits to oblige the tenant. The

tenant said that some weeks after this incident, he reverted to his usual schedule of music practice. The tenant said that the neighbour retaliated by increasing the amount of early morning noise. The tenant said that in May, 2013 he began to keep a written log of the noise. Later, in November he began to record video and audio files to document the noise.

The tenant has complained to his landlord, who has written letters to the strata council on his behalf and the tenant has also lodged complaints with the police. He has testified that the noise continues despite these actions and he has now claimed compensation from his landlord. The tenant submitted a copy of his written log and a USB flash drive containing video files that he said substantiated the severity of the noise created by his upstairs neighbour.

The landlord testified that she received the first notice of a noise complaint from the tenant on December 30, 2013 when he recounted the history of his noise problems. The landlord contacted the property manager to ascertain the appropriate procedure for dealing with a noise complaint. After discussion between the landlord and the tenant and communications with the property manager, on January 6, 2014 the landlord sent a noise complaint letter to the property manager. The landlord provided a chronology of her communications and dealings with the tenant and the property manager concerning the noise issue. These included confirmations to the tenant that a second complaint letter had been sent. When the tenant told the landlord that the noise was an ongoing problem that he described as harassment, the landlord requested an urgent meeting with the president of the strata council to address the issue. She was told by the property manager that the matter could be addressed at the next strata meeting on February 26th. She was also advised that a warning letter had been sent to the tenant's neighbour with respect to his noise complaints. The landlord sent further complaint letters to the property manager at the tenant's request. On February 24th the landlord advised the tenant that the strata council invited the tenant and the landlord to a meeting to discuss the tenant's complaints. The tenant refused to attend the meeting and told the landlord to attend by herself.

The landlord testified that she attended the meeting as did the tenant's neighbour. She was advised at the meeting that other occupants in the rental property have commented to the strata council about the tenant's music and she heard that there is noise in the building related to pipes and mechanical systems. The tenant's neighbour denied making extraordinary noise or acting to disturb the tenant, but he complained about the tenant's disturbing music playing and the attendance of students for music lessons. In the absence of input from the tenant, the strata council sought to achieve a result whereby the parties would proceed in the future by showing respect for each other's entitlement to quiet enjoyment. The landlord reported to the tenant as to the outcome of the meeting. The tenant continued to complain of disturbances and harassment. He objected to what he perceived as inaction on the part of the landlord and a lack of further complaint letters.

The tenant filed his application for dispute resolution on April 5th. He claimed payment of the sum of \$14,400.00. He said the amount was half of his monthly rent of \$1,200.00 for 24 months. The landlord's position is that the tenant's claim is unfounded; she was not made aware of the tenant's noise complaint until December 30, 2013, only three months before the tenant filed his application and since receiving his complaints, the landlord has advocated on his behalf, written a number of letters and attended meetings. She said that the tenant, by his refusal to participate in a meeting and present his evidence impeded his own cause.

Analysis and conclusion

The tenant's claim against the landlord for compensation stretching back for a 24 month period is unfounded; this is not a case where the landlord failed to act upon the tenant's complaints after written notice of them. The landlord acted promptly after December 30th to advocate on the tenant's behalf.

With respect to the substance of the tenant's noise complaints, I did not find the tenant's video evidence to be compelling evidence that the tenant has been unduly disturbed, or that the noise he has complained of constitutes harassment or a loss of quiet enjoyment to the degree that it would attract compensation from the landlord.

I find that the landlord has acted appropriately in addressing the tenant's complaints. The tenant's application for a monetary award and for an order that the landlord comply with the Act, Regulation or tenancy agreement is dismissed.

If there are future occurrences that the tenant reasonably believes would justify a further application, the tenant has leave to reapply.

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 4, 2014

Residential Tenancy Branch

