



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant stated that on June 30, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents he wishes to rely upon as evidence were personally delivered to the Landlord's place of business. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to compensation as a result of noise?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 29, 2007.

The Tenant stated that beginning in November of 2013 he was frequently disturbed by noise emanating from the unit above his rental unit, although he was unable to identify the source of the noise. He stated that he first reported the problem to the Agent for the Landlord #2 in December of 2013 or January of 2014. He stated that the Agent for the Landlord #2 asked him to document details of the disturbances, which he feels was an unreasonable request.

The Agent for the Landlord #2 stated that the Tenant first reported noise disturbances in November of 2013. He stated that the Tenant was unable to identify the source of the noise so he asked him to document details of the disturbances, for the purposes of identifying the source of the noise.

The Landlord and the Tenant agree that the source of the noise was eventually determined to be a reclining chair which was very noisy when the occupant of the upper unit closed the chair.

The Agent for the Landlord #2 stated that the source of the noise was determined in late December of 2013 or early January of 2014. He stated that shortly thereafter the chair was removed from the suite and he understood the issue was resolved. The Tenant stated that the chair was removed in January, February, or March of 2014, after which he was not disturbed by that noise until June of 2014.

The Agent for the Landlord #2 stated that the chair was returned to the occupant of the suite above the rental unit in June of 2014 after that occupant agreed to modify his behaviour, including not using the chair at night. The Tenant stated that when the chair was returned in June he was again disturbed by noises from the chair for a period of

approximately one week. He stated that the chair was removed and he is no longer disturbed by noise in the suite above him.

The Agent for the Landlord #2 stated that three days after the chair was returned to the occupant of the suite above the rental unit, the Tenant informed him that he was again being disturbed by noise from the upper suite. He stated that the chair was removed from the upper suite within a few days and is no longer on the residential property.

The Tenant is seeking financial compensation for these noise disturbances because he was unable to sleep through the night and he found the experience very stressful.

The Tenant is also seeking compensation for noises related to a roof repair. He stated that he was disturbed for a period of approximately one week, while scaffolding/fencing was erected and while the roof repairs were being completed on his residential complex. He stated that these disturbances occurred during the day.

Analysis

Every tenancy agreement contains an implied covenant of quiet enjoyment. A landlord may be found to have breached a tenant's right to quiet enjoyment if the landlord permits or allows physical interference by an outside or external force which is within the landlord's power to control. Frequent and ongoing interference by another tenant, if preventable by the landlord, may form the basis for a claim of a breach of the covenant of quiet enjoyment if the landlord stands idly by while others breach the tenant's right to quiet enjoyment.

In these circumstances I find that the Landlord made reasonable efforts to identify the source of the noise disturbances and, upon determining the source of the noise, to prevent continued disturbances. Although the problem does not appear to have been resolved for a few months, I find that delay reasonable, given that the source of the

noise was not immediately determined. I find that the delay was further justified by the Landlord's need to communicate with the occupant of the upper suite and to negotiate a resolution to the disturbance. I note that the source of the noise could be considered a typical daily activity and the occupant may not have been aware that his actions were disturbing the Tenant, until the matter was brought to his attention.

I note that I am unable to determine precisely how long it took to resolve the Tenant's concerns, as neither party was able to provide the exact date the problem was reported; the exact date the source of the problem was identified; or the exact date the chair was removed.

I find that the Landlord acted reasonably when the chair was returned to the occupant of the upper rental unit in June of 2014, given that the occupant promised to alter his behaviour. I find that this was a reasonable attempt to balance the needs of the Tenant with the needs of the occupant of the upper unit.

In determining that the Landlord acted reasonably in returning the chair, I was heavily influenced by the fact the Landlord removed the chair shortly after determining the noises from the chair continued to disturb the Tenant.

As the Landlord responded to the Tenant's concerns in a reasonable and timely manner, I find that the Tenant is not entitled to compensation for another occupant disturbing his quiet enjoyment.

Temporary discomfort or inconvenience does not generally constitute a basis for a breach of the covenant of quiet enjoyment. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. I find tenants are not typically entitled to compensation for noises related to a roof repair, which is general maintenance. I find that to be particularly true in these circumstances, given that the noise occurred during the day and the repairs were completed in approximately one week. Given that the repairs were completed in a responsible and

timely manner, I find that the Tenant is not entitled to compensation for disturbances associated to this repair.

Conclusion

The Tenant's claim for compensation 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: August 27, 2014

Residential Tenancy Branch