



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to make repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The tenant testified that he served the landlord with the Application for Dispute Resolution hearing notice and first written evidence package on October 21, 2014 via registered mail. He provided a Canada Post tracking number orally during the hearing. The landlord testified that he received the Application and first written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was deemed served with the Application on October 26, 2014, the fifth day after its registered mailing.

The tenant testified that he served the landlord with the second written evidence package, consisting of a condition inspection report, on October 27, 2014, by handing it to him personally. The landlord testified that he received the second written evidence package. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was served with the second written evidence package on October 27, 2014.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Background and Evidence

The landlord testified that this tenancy began on June 1, 2014 and continues to date. It is a fixed term tenancy for one year ending on May 31, 2015 and then it will transition to a month-to-month tenancy. Rent is payable monthly in the amount of \$810.00 due on the first day of each month, with parking payable in the extra amount of \$10.00 per month. A security deposit in the amount of \$410.00 was paid by the tenant on May 31, 2014. A condition inspection report was completed on May 27, 2014 and was included in the tenant's application, however, only two pages were included. The tenant testified that both parties signed the report.

The tenant testified that he made verbal and written complaints to the landlord regarding a loss of quiet enjoyment due to noisy neighbours in the apartment building. The tenant stated that the noise issues regarding the neighbour below his rental unit had resolved. The tenant testified that he was proceeding on this issue solely on the basis of the neighbour above his rental unit and that he would like the noise issue resolved.

The tenant testified that he hears clunking, banging and shuffling of furniture from the neighbour above. Previously, he would also hear hammering on wood. The noises have been occurring four to five times per day in the last few days before this hearing. He states that the noises are irregular and occur as early as 9:00 a.m. and as late as 9:00 p.m.

The tenant sent a letter, dated June 28, 2014, which is enclosed with his Application, to the neighbour above regarding his noise complaints, including loud crashes, sounds as if weights were being dropped and heavy walking, and asked the neighbour to contact him if he required any further discussion. The tenant sent letters to the landlord, left telephone messages and made a note of in-person conversations regarding the neighbour above, from August 3, 2014 to September 27, 2014, which are documented with his Application.

The tenant testified that he approached the landlord with his noise complaints, but the landlord would yell at him and ignore his phone calls. The tenant stated that he wanted proof from the landlord regarding the consequences to the neighbour above of making noise. The tenant also stated that he wanted a better attitude from the landlord and a response when he telephones him regarding an issue.

The landlord testified that after being notified by the tenant regarding the noise complaints, he discussed the issue verbally with the neighbour above, approximately three times. The landlord testified that the neighbour above built a special stool for when he was stepping down from the balcony to the living room floor, in order to minimize noise to the tenant. The neighbour above also asked the landlord about the work hours of the tenant, in order to avoid making loud noises, such as moving a table on his deck, during those times when the tenant was home.

The landlord testified that the neighbour above is a 60 year old male, who repairs small dental equipment on a small bench, and that he could speak to the neighbour while he was repairing the equipment, such that it was not that noisy. The landlord has permitted this neighbour above to perform this type of repair work in the apartment building. The landlord testified that no one else in the 47-unit apartment building has complained, whether verbally or in writing, regarding this neighbour above, in the three years since the landlord has managed the building. The landlord further testified that the previous tenant who occupied the same rental unit as the current tenant does now, did not complain about this same neighbour above. The tenant testified that this previous tenant, B, complained to him regarding the noise issue from the neighbour above, but did not complain to the landlord about it.

The landlord stated that the tenant has not made any complaints regarding noise late at night or early in the morning, but simply during the day. The landlord further testified that the neighbour above was not involved in any late night parties or noises of that nature.

Analysis

Carpet Repair Issue

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of one of the issues of their dispute.

Both parties agreed to the following final and binding settlement of the issue regarding the landlord making repairs to the rental unit, pursuant to section 63 of the *Act*.

1. The landlord will contact a carpet professional by 5:00 p.m. on November 10, 2014 to arrange an appointment for that professional to come in and inspect the tenant's rental unit for carpet humps required to be fixed;
2. The landlord will contact the tenant by 5:00 p.m. on November 12, 2014 to advise about the carpet professional inspection appointment for the tenant's rental unit;
3. The landlord, tenant and carpet professional will inspect the tenant's rental unit together on an agreed upon date, in order to identify all carpet humps required to be fixed in the rental unit ("inspection");
4. The tenant agrees to accommodate the carpet hump fixing, including moving any furniture and/or the 33 gallon fish tank, if necessary, and agrees to bear the costs associated with same;
5. The landlord agrees to bear all costs with respect to fixing all carpet humps in the rental unit, that are identified during the inspection;
6. The landlord agrees to have all carpet humps in the rental unit, that are identified during the inspection, fixed by November 30, 2014.

These particulars comprise the full and final settlement for both parties, of all aspects of the issue regarding the landlord making repairs to the rental unit, pursuant to section 33.

Loss of Quiet Enjoyment

While I have turned my mind to all the documentary evidence, including miscellaneous letters, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 62 of the *Act* establishes that I can make any order necessary to give effect to the rights, obligations and prohibitions under the *Act*, including an order that a landlord comply with the *Act*, regulations or a tenancy agreement, and an order that this *Act* applies. The party requiring the order of compliance bears the burden of proof.

Section 28 of the *Act* deals with the tenants' right to quiet enjoyment:

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

(a) reasonable privacy;

(b) freedom from unreasonable disturbance...

In this situation, the tenant must prove the existence of a loss of quiet enjoyment, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* or regulations, on the part of the landlord. In this case, the onus is on the tenant to prove on a balance of probabilities, that the landlord's failure to comply caused the tenant a loss of quiet enjoyment.

Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, a landlord must balance his responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*.

The landlord discussed the tenant's noise complaints with the tenant on different occasions, thereby responding to his complaints. The landlord also discussed the noise complaints with the neighbour above, thereby attempting to resolve the tenant's complaints. The landlord is aware of the neighbour's repair business, stating that it is not very noisy and he is able to speak to the neighbour while he is working. The neighbour above has taken action to minimize noise and has attempted to rectify the situation by building a special stool and asking about the tenant's work hours to avoid noise during those times.

The tenant's complaints are of noises during daytime hours between 9:00 a.m. and 9:00 p.m. These are regular hours whereby tenants in a multi-unit residential building are expected to make certain noises in order to live in their unit. The landlord confirmed that he received no complaints from any other tenants in the building regarding the neighbour above. I find that the landlord dealt with the tenant's noise complaints appropriately.

The tenant has failed to provide any witness testimony to corroborate his loss of quiet enjoyment. The tenant has not provided any documentary evidence about the effect of any possible loss of quiet enjoyment on his health or work, if any. The tenant has not met his burden of proof, on a balance of probabilities, to demonstrate that the landlord has not complied with the *Act*, regulation or tenancy agreement, such that it affected his right to quiet enjoyment, and that the landlord failed to take appropriate action to follow up on the tenant's complaints about his neighbour above. Therefore, I dismiss the tenant's application to have an order issued against the landlord to comply with the *Act*, regulation or tenancy agreement, without leave to reapply.

Conclusion

The issue regarding the carpet repairs has been resolved as per the settlement agreement outlined above.

I dismiss the tenant's application to order the landlord to comply with the *Act*, regulation or tenancy agreement, without 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: November 17, 2014

Residential Tenancy Branch

