



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRESCENT HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: O RR FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) An Order that the landlord ensure his privacy and reasonable enjoyment pursuant to section 28;
- b) A Monetary Order or Rent rebate for the failure of the landlord to address the noise from the suite above which is unreasonably interfering with his quiet enjoyment.

SERVICE

I find that the landlord was personally served with the Application for Dispute Resolution hearing package. They stated they received it.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord through act or neglect has failed to protect his right to peaceful enjoyment contrary to section 28 and that he is entitled to compensation or a rent rebate for this act or neglect?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in August 2013, rent is \$751 a month (to be raised to \$766 per month in January 2015) and a security deposit of \$375.50 was paid. It is undisputed that this tenant has made complaints about noise emanating from the tenant above.

The tenant submitted a number of letters sent to management concerning the problem. He said he complained to the former male manager but had no indication that anything was done about it. (The landlord said they have a letter on file dated April 4, 2014 from that manager to the tenant noting his concerns, saying the noises were daily living noises but he would address the concern). The tenant's latest letter in October 2014 notes that he disagrees with what management considers reasonable noise but also states that it has improved considerably from the initially frequent noise between 1a.m.

and 4a.m. after the numerous requests for the upstairs tenant to be more aware. In the hearing, the tenant said the noise after 11 p.m. and between 1a.m. and 4:30 a.m. was most disturbing and it decreased substantially every time management spoke to the upstairs tenant when he complained. The noise is described as opening and closing cupboard doors and banging in the sink plus noise from the balcony. He said the tenant moves things on the balcony between 6a.m. and 8a.m. but since he filed for arbitration on October 9, 2014, the noise level has been fine but he is worried it will not last. Management has offered him some other suites but he objects to paying more and moving for something he considers is not his fault. He requests \$200 a month rent reduction for 10 months due to the landlord's failure to ensure his peaceful enjoyment.

The landlord said there are 300 units in the building which is a wood frame ten year old building. They said they do everything in their power to address problems in a timely fashion. They noted the upstairs tenant has lived there for over 6 years, the former occupant of this tenant's unit had lived below her since 2004 with no complaints and none of the upstairs tenant's neighbours have ever complained about any noise issues with her. They said that the upstairs tenant emphatically denies making noises other than from her daily living activities, she walks in her bare feet to be quieter and makes every effort to be considerate of her neighbours. They said she is a conscientious person who has been making extraordinary efforts to accommodate the tenant below but it is natural that she would revert to normal noises of everyday living. They note the tenant does not state in his complaint to them a specific instance and time, for example, "Last night at 1:30a.m., I heard her do....." so it is difficult to address as the upstairs tenant denies any noise other than daily living activity noise. They also pointed out that there is a posted emergency number which the tenant could call so that someone could come and hear the noise. The tenant said he considered the number to be for emergencies and not noise issues.

In evidence are many letters between the parties, letters from the landlord to the upstairs tenant and her response and written statements of the parties. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

Section 28 of the Act sets out the tenant's right to quiet enjoyment.

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:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;
(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Page 6 of the Residential Tenancy Guideline explains further that “inaction by the landlord which permits or allows ...interference by an outside or external force which is within the landlord’s power to control” may be a basis for finding of a breach of quiet enjoyment. Examples of such interference include “unreasonable and ongoing noise”.

The parties agree that this is a four storey wood frame building which is about ten years old. I find in this case the tenant has not satisfied the onus of proving on a balance of probabilities that the landlord has either through act or neglect failed to protect his right to peaceful enjoyment. I find the weight of the evidence is that the landlord has responded to his complaints, contacted the upstairs tenant in a timely manner and as the tenant said himself, the noise from the upstairs tenant has abated for a time in each instance. At the present, he said the situation has been fine since October 9, 2014 when he filed for arbitration. Furthermore, I note that section 28 of the Act and the Guideline quoted above notes examples of unreasonable disturbance would be “unreasonable and ongoing noise”. I find insufficient evidence that there is **unreasonable and ongoing** noise. I find the examples quoted by the tenant include the upstairs tenant walking in bare feet when she should wear slippers (according to him), and banging caused by her using her kitchen sink and cupboards. I find the evidence supports the landlord’s evidence that the noises are noises of everyday living and the tenant upstairs should not be required to take extraordinary measures to control her normal living.

Although moving furniture on the balcony at 6 a.m. or making loud noises between 1a.m. and 4 a.m. might be considered unreasonable noise, I find insufficient evidence that this is occurring or occurring often as the landlord states the upstairs tenant denies it vehemently, the previous tenant who was there from 2004 to 2013 never mentioned a problem and none of the upstairs tenant’s neighbours have complained. I find it improbable that no one would have complained if the upstairs tenant is making loud noises in the middle of the night or moving balcony furniture around between 6 and 8 a.m. As the landlord suggested, if the tenant encounters these situations again, he may wish to call the emergency number provided when the event is occurring so the landlord may witness the problem and address it at that time.

I find furthermore, as the tenant stated from his contact with the architect, that the building has had two code upgrades. I find section 32 of the Act requires the landlord to maintain the building in a state that “*complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation*”. I find there is no allegation or proof that the landlord has not complied with section 32 of the Act.

For the reasons above, I find the tenant not entitled to a rent rebate.

Conclusion:

I dismiss the Application of the tenant in its entirety. No filing fee was involved so none is awarded.

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 05, 2014

Residential Tenancy Branch