



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR, FF

Introduction

The tenants apply for compensation by way of rent reduction for a disturbance caused by an unusual and mysterious noise from a neighbouring unit. The tenants also request an Order to repair the noise. Both parties were represented.

Issue(s) to be Decided

Does the relevant evidence show on a balance of probabilities that the tenants are entitled to the relief requested?

Background and Evidence

The rental unit is an apartment in a 54 unit apartment in a strata building. The tenancy started in March 2014. The rent is \$1,450.00. The landlord holds a \$ 800.00 security deposit.

The tenants through CP testified that between June, 2014 to date there is a noise emanating from an upper suite's shower. The tenant claims that this noise lasts between one to five minutes and occurs about four times a day in the morning and the evening. The tenant testified that he complained several times in writing to the landlord who sent inspectors and repair persons but nothing was done to remedy the problem to date. The tenants submitted sound files which they allege demonstrated the noise complained of. The tenants request that the landlord repair the problem and compensate the tenants by reducing the rent by one third from September 2, 2014 though February 2015 when their tenancy will end.

The landlord's agent ZW is actually the landlord's sister and the owner of the upper strata unit which is rented to another group of tenants. In short ZW is the landlord of the unit which is allegedly the source of the noise.

ZW testified that both she and her sister RW investigated the complaint by retaining a building inspector, plumber and technician. ZW testified that all of the repair people reported that either they could not hear the noise or that it was so minor and usual that it was very hard to hear. ZW testified that the noise was water running in a pipe when the shower was utilized in the upper suite. ZW says that the tenants are too sensitive and that the noise is really nothing out of the ordinary. The landlord's representative disputes the tenants' monetary claim.

Analysis

The Residential Tenancy Policy Guideline #6 "Right to Quiet Enjoyment" summarized the law relating to the landlord's covenant for quiet enjoyment. It provides:

The *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* (the Legislation) establish rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however a written provision setting out the terms in the tenancy agreement pertaining to the provision of quiet enjoyment cannot be used to remove any of the rights of a tenant established under the Legislation. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

- **Basis for a finding of breach of quiet enjoyment**

Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control. The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others

engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission;
- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Temporary discomfort or inconvenience does not 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, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment, however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it. A landlord would not be held responsible for interference by an outside agency that is beyond his or her control, except that a tenant might be entitled to treat a tenancy as ended where a landlord was aware of circumstances that would make the premises uninhabitable for that tenant and withheld that information in establishing the tenancy.

(footnotes removed, emphasis added)

The covenant of quiet enjoyment is by a landlord over issues that arise within the landlord's control.

The definition of landlord is found in section 1 of the Act. It is as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit**, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or**
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;**
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

I find that ZW while is a representative at this hearing of WR who is the landlord of the suite in which these tenants reside, she is not the tenants landlord. ZW is the landlord of the unit which the tenants allege is the source of the noise. Accordingly RW is not the landlord of the unit which the tenants allege is the source of the noise. I therefore find that RW cannot at law provide a covenant for the quiet enjoyment to her tenants regarding a source for which she has no lawful authority over. I therefore find that the tenants cannot make any claim against RW regarding alleged disturbances emanating from the suite in question. The tenants' claims must be dismissed.

Alternatively, It should be noted the covenant for quiet enjoyment has little to do with "quiet" in the acoustic sense.

The covenant for quiet enjoyment is an assurance against the consequences of a defective title including any disturbance found thereon, and against substantial interference, by the covenantor or those claiming under him with the enjoyment of the premises for all usual purposes....

(Williams & Rhodes, Canadian Law of Landlord and Tenant (6th ed), 1988)]

I have listened to the sound files submitted by the tenant and find that they demonstrate that the noise complained of was hardly detectable. ZW's evidence is consistent with that finding. Accordingly I accept and prefer the landlord's evidence that all the technicians and repair persons hired by the landlord either could not detect any noise or it was minimal. In my view the "noise" complained about by the tenants was what might be expected from ordinary living in a multi-unit or strata building. The "disturbance" was a minor one would not cause even a slight inconvenience to an ordinary reasonable

person. I therefore find there was not a breach of the landlord's covenant of quiet enjoyment.

Conclusion

The tenants' application must be dismissed. There will not be any recovery of the filing fee.

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: January 12, 2015

Residential Tenancy Branch

