



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on January 9, 2015, to obtain an order to have the Landlords comply with the Act, regulation, or tenancy agreement, for other reasons, and to recover the cost of the filing fee from the Landlord for their application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenants. Each party gave affirmed testimony and confirmed receipt of evidence served by each other.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlords be ordered to comply with the Act, regulation, or tenancy agreement?

Background and Evidence

The undisputed evidence was that the Tenants entered into a month to month tenancy that began on December 1, 2013. Rent of \$1,180.00 is due on or before the last business day of each month. The monthly payment was increased to \$1,215.00 due to the addition of parking fees that were not part of the original agreement. On or before December 1, 2013 the Tenants paid \$590.00 as the security deposit.

The Landlord described the rental unit as being an apartment unit located in a wood frame building that was built in the late 1950's early 1960's. The building has ten rental units located on three floors and the Tenants' rental unit is on the top floor.

Each party submitted documentary evidence and oral testimony pertaining to a chronological list of complaints that have been generated by a tenant who resides in the rental unit directly below these Tenants, communications between the Landlord and the Tenants regarding those complaints, and their own interpretation of the events.

The Tenants testified that they submitted their application for Dispute Resolution to address the noise complaints being made by the downstairs tenant. They request that a Decision be issued to: (1) define what a reasonable noise complaint is; (2) define what an unreasonable complaint is; and (2) Order the Landlord to deal with the downstairs tenant in response to all unreasonable complaints.

The Tenants noted that the complaints began on December 6, 2013, five days after they moved into the unit, and have continued with the most recent complaint being from early February 2015. The Tenants summarized the complaints into the following three categories:

- 1) Complaints about their alarm clock ringing to wake them up at 5:15 a.m. so they can attend work. The Tenants argued that once the downstairs tenant complained about their alarm clock they switched to using a watch alarm which is quieter. They submitted that the alarm rings for only about 15 seconds. There is no snooze setting on the watch alarm and the alarm is never reset to ring multiple times. The Tenant stated that he gets out of bed as soon as the alarm rings, shuts off the alarm, and begins to get ready to leave for work.
- 2) Complaints about the volume of their music during non-quiet hours. Quiet hours as per section #19 of their tenancy agreement are between 11:00 p.m. and 9:00 a.m. The Tenants argued that the constant complaints about their music relate to them playing music after 9:00 a.m. and before 11:00 p.m. except for on one occasion in February 2014 where they did have guests over playing games until early in the morning. Although the Tenants had guests after 11:00 p.m. that day they argued that their conduct was what they considered to be reasonable noise volumes while entertaining visitors. They also noted that their music is not being played at excessively high volumes; rather, they are of the opinion that it is played a normal volume levels.
- 3) Complaints about noise at times when they have guests over during the day and not during quiet hours; such as the complaint received earlier this month when the Tenants had two guests over and were baking and listening to music at 4:00 p.m. on a Sunday afternoon.

The Landlord testified and confirmed that there have been regular complaints coming from the same downstairs tenant. He submitted that his policies are to have the two tenants communicate with each other directly to try and get them to co-operate to

establish what is reasonable and unreasonable amongst themselves. He noted that since that has failed he has had the downstairs tenant inform him of the issues and he then advises and discusses the issues with the upper Tenants.

The Landlord confirmed that the downstairs tenant has argued that she works from home and that her job requires her to have quiet to be able to complete her research duties. The Landlord acknowledged that both the upper Tenants and the downstairs tenant have residential tenancy agreements and not commercial or employment leases. He noted that the downstairs tenant has told him that she has purchased ear plugs and noise reducing headphones and that she has resided to sleeping on her couch so she is not awoken by the upstairs Tenants' alarm clock.

The Landlord confirmed that he does not reside in the building and he has not made any effort to attend the rental period at any times during the alleged noise complaints. He stated that he does not intend to attend the building at 5:15 a.m. to listen to the alarm ringing and argued that he cannot be the one to determine what is reasonable or unreasonable when it comes to noise complaints. He stated that he is of the opinion that the tenants themselves need to come to a compromise. He stated that he has never suggested that the downstairs tenant move to another rental unit in the building and noted that there are no vacancies at this time.

Analysis

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline # 6 provides that 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.

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.

When tenants occupy a multi-unit wood framed building there are normal sounds or noises that are generated from day to day living which can be heard throughout the building at all hours of the day or night; which all tenants have to deal with. There is also an expectation that tenants compromise when other tenants have family and or friend celebration(s) occasionally, around birthdays, or holidays.

As explained to the parties during the hearing, the Act stipulates a tenant, meaning all tenants, are entitled to freedom from **unreasonable** disturbance. Neither the Act, nor the Regulations, nor the Residential Tenancy Policy Guideline 6: *Right to Quite Enjoyment*, define the terms “unreasonable disturbance”.

Without a formal test for determining an unreasonable disturbance I have turned to a reasonable persons test in determining that noises generated from the normal operation of equipment used in day to day living, such as flushing toilets, heating and air conditioning units, running of household appliances, opening and closing cupboards and doors, alarms used to wake tenants for work, music or televisions at reasonable volume levels during reasonable hours of the day and evening, and voices at normal volumes when guests are visiting, are defined as being reasonable disturbances.

That being said, disturbances above regular volume levels, such as excessively loud music, banging from a base generating from video games, televisions or stereos, excessive slamming, yelling, or screaming noises, would constitute an unreasonable disturbance.

Upon consideration of the foregoing, and notwithstanding the Landlords’ arguments that he is of the opinion that this matter falls to the tenants to reach a compromise, I find there to be sufficient evidence to prove that the downstairs tenant’s complaints involve what I’ve determined to be reasonable disturbances. Specifically, those disturbances involve the use of an alarm clock ringing for 15 seconds to wake the upper Tenant for work, family or friend visits during the day, and the occasional gathering after 11:00 p.m.

Therefore, it could be said that if the downstairs tenant continues to raise unreasonable noise complaints directly to the upstairs Tenants, those complaints could eventually be seen as a breach to the upper Tenants’ quiet enjoyment, for which the downstairs tenant could be evicted, pursuant to section 47 of the Act.

As such, I find that the responsibility to deal with the downstairs tenant’s issues or complaints falls to the Landlord in this case and not the upstairs Tenants. That is to say the Landlord must inform the complaining tenant of my findings, as listed above, of what a reasonable complaint and an unreasonable complaint are; and the Landlord must deal with any future complaints from that downstairs tenant, in accordance with the Act.

Conclusion

I HEREBY ORDER the Landlord to comply with the Act, regulation, or tenancy agreement, pursuant to section 62 of the Act.

The Tenants have succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee. This one time award may be deducted from the Tenants' next rent payment.

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: February 16, 2015

Residential Tenancy Branch

