



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WILLIAM NEMETZ INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDC, RR, FF

Introduction

This hearing dealt with the tenant's application for orders for the landlord to comply with the Act, regulations or tenancy agreement; monetary compensation for damage or loss under the Act, regulations or tenancy agreement; and, a reduction of rent payable for repairs, services or facilities agreed upon but not provided. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord had submitted evidence after the time limit for submitting a response; however, the tenant stated she had reviewed the landlord's evidence and was agreeable to its inclusion since the tenant wanted to refer to it in addressing an issue that arose more recently. Accordingly, I permitted admittance of the landlord's late evidence.

Issue(s) to be Decided

1. Has the tenant established that it is necessary to order the landlord to comply with the Act, regulations or tenancy agreement?
2. Has the tenant established an entitlement to monetary compensation from the landlord?
3. Has the tenant established an entitlement to a rent reduction for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenancy commenced in 2003 and the tenant is currently required to pay monthly rent of \$850.00 plus parking of \$15.00. The rental unit is a one bedroom apartment on the top floor of an older wood frame building with hardwood flooring that is at least 50 years old.

The tenant submitted that since April 2015 she has been disturbed by the sounds of walking, talking and laughing coming from the unit below hers. The tenant has complained to the landlord on a number of occasions but the problem persists. The tenant's first complaint to the landlord was put in writing and placed in the manager's mail slot on May 26, 2015.

The tenant seeks to have the landlord be more assertive, firm and effective in dealing with the tenant below (referred to as CG in this decision) so that CG and her boyfriend are more aware of the noise they create and are more courteous. The tenant is of the position that the landlord should have another conversation or issue a warning letter to CG.

The landlord acknowledged receipt of the tenant's complaint letter of May 26, 2015 on June 2, 2015 when she went to collect rents. Upon receiving the complaint the landlord took action by making enquiries with other tenants who live adjacent and below CG's unit. Those tenants did not indicate they were disturbed by CG or her boyfriend's activities and that what they were able to hear were the sounds of ordinary living activity common in apartment style living. The landlord determined that the only person experiencing disturbance was the tenant. The following day the landlord informed CG that they had received a written noise complaint and CG apologized and said she would be more mindful of noise levels in her unit. The landlord advised the tenant of what transpired and the landlord considered the matter resolved at that point.

The landlord at the hearing, who is the manager of the property, stated that the tenant has sent complaint letters to her and to the owner but submitted that when the tenant writes to the owner there is a delay the manager receiving the information. The landlord stated that she is the one the tenant should be contacting so that she can take appropriate action. However, the landlord pointed out that she cannot require CG to stop walking, talking, laughing or having guests in her unit.

The landlord acknowledged that another complaint had been received from a different unit but that complaint was specific to the sounds of sex on a particular night. The landlord responded to that complaint by communicating with CG and in response CG moved the bed away from the wall and installed carpeting in the bedroom. I heard from the landlord that CG has also placed carpeting in her living room in an attempt to lessen sound transference.

Included in the landlord's evidence package was a letter from CG dated September 7, 2015. CG's letter refers to a letter the landlord gave to her on July 15, 2015 which evidently referred to a noise complaint. CG stated that she is conscientious of her neighbours and even moved her TV out of her bedroom when the tenant complained that she could hear it. CG indicates that the tenant asked her to spread baby powder on her floors to alleviate the speaking sounds and install carpeting in her unit; however, CG does not wish to live with the mess of baby powder on the flooring and cannot afford to install carpeting throughout her unit. CG states that her activities and sound levels are that of ordinary living and not unreasonable. CG pointed out that she also hears sounds from tenants living around her but that is part of apartment living. Finally, CG indicates that her ability to enjoy her home is being compromised by the tenant's unreasonable expectations and demands.

I heard about a more recent incident on October 24, 2015 where the tenant was disturbed by noise coming from CG's unit and at approximately 1:30 a.m. she knocked on CG's door. The male occupant answered the door and asked the tenant what her problem was before using a curse word. Both the tenant and CG wrote to the landlord voicing their concerns over what transpired on that night. The landlord was of the position that the tenant should not have knocked on the door and confronted CG or the occupant.

The tenant has the perception that the landlord is prejudiced toward her since the landlord was effective in taking action when the other tenant made a complaint about CG's noise level. However, when she complains landlord's response has been to emphasize that CG has rights as a tenant and that the tenant should wear ear plugs or move.

The landlord denied being biased or prejudiced toward the tenant but is frustrated that the tenant expects that she can stop CG from living ordinarily. The landlord is of the position that the tenant has to

appreciate that noise carries in the building considering the way it was constructed many years ago, has hardwood floors, and that tenants have the right to walk, talk, laugh and have guests in their units. The landlord acknowledged that she suggested the tenant try ear plugs in an attempt to be helpful.

The tenant submitted that she has investigated possible sound proofing solutions but that would entail installing sound insulation between the units. The landlord was of the position that such a major alteration to the building would require one of the units to be vacated.

With respect to the tenant's monetary claim, she had applied for compensation of \$50.00 per month but during the hearing she acknowledged she did not understand how that was determined or the basis for it. That same response was also given with respect to her request for a rent reduction.

Analysis

Under the Act, a tenant is entitled to quiet enjoyment under section 28. Section 28 provides:

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.

[reproduced as written with my emphasis added]

Residential Tenancy Policy Guideline 6: *Right to Quiet Enjoyment* provides the following policy statements, in part, developed in accordance with common law and principles of statutory interpretation:

This guideline deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment "promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy."

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.

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...

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists...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.

In this case, the tenant asserts that she has suffered from frequent disturbances due to the actions of CG. The tenant notified the landlord of the issue by way of the letter she wrote on May 26, 2015 which the landlord received on June 2, 2015.

It is undisputed that the tenant is able to hear the sounds of walking, talking and laughing from CG's unit. The landlord has submitted that action was taken upon receiving complaints from the tenant, including: investigating the complaint with other tenants; talking to CG about the tenant's complaint; and, advising CG that sounds carry in the building. The landlord also issued a letter to CG regarding sounds that can be heard by other tenants, namely the sounds of sexual activity, which was subsequently rectified. Considering these actions, I am satisfied the landlord has not sat idly by in response to the tenant's complaints. Rather, at issue is whether the sounds the tenant complains of (walking, talking, dropping things, and laughing) is something within the landlord's control to change which I analyze below.

All tenants are entitled to possession of the rental unit, as provided under section 28. Possession of a residential rental unit would ordinarily include normal daily activities such as: sleeping, cooking, socializing, relaxing, personal hygiene activities and the like. As such, the sounds associated with such activities are considered the sounds of normal daily activity. A landlord cannot stop a tenant from using the rental unit as it is intended as a landlord would have no remedy if the landlord tried to stop the tenant from doing so. Since the landlord cannot stop its tenants from carrying out ordinary daily activities, sounds associated with those activities are going to result.

Where a building that is the subject of the dispute was constructed many years ago, the occupants must expect that their use and enjoyment of the building is in relative to its age, character and location. The age of a building may be appealing to some but it also has consequences such as not having been built with the most modern sound deadening construction techniques. Hardwood flooring, such as in these units, may also contribute to sound transference. That leads to the question as to what is required of the landlord with respect to changing or upgrading the building if another tenant hears such sounds that result from ordinary daily activity of another tenant and is disturbed by them.

Section 32(1) of the Act provides for the landlord's obligation to repair and maintain the property. It provides:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

[reproduced as written with my emphasis added]

Paragraph (b) takes into consideration that the age and character of the building must be taken into consideration when determining a landlord's obligation to repair and maintain. I find this provision is intended to recognize that building construction techniques change and evolve from time to time and that it is unreasonable to expect modern conveniences and benefits while renting a property constructed many years ago using different techniques that were lawful at that time. Therefore, I find the landlord is not obligated to upgrade, improve, or alter the residential property to with respect to modern sound-proofing techniques.

During the hearing, the tenant requested that the landlord issue another warning to CG does not get the impression that she "won"; however, I find this suggestion is unlikely to be of benefit. I make this finding considering the landlord has already spoken with CG and sent her a letter. The sounds have persisted but I am of the view they are the sounds of ordinary living activities that are to be expected in an apartment of this vintage and construction. Also, considering the confrontation of October 24, 2015 I am of the view that another complaint coming from the tenant is likely to inflame the animosity between the tenants rather than improve the situation since CG remains entitled to enjoy ordinary daily activity in her unit. Therefore, I make no orders to the landlord.

With respect to the tenant's monetary claim and request for rent reduction I found the tenant did not meet her burden to present a clear basis for receiving such remedy from the landlord. Further, the tenant has not satisfied me that the landlord has violated the Act, regulations or tenancy agreement. Therefore, I dismiss the tenant's requests for monetary relief.

In light of the above, I dismiss the tenant's application entirely. However, in keeping with section 62 of the Act, which provides me the authority to issue any order that I find necessary to give effect to the Act, regulations or tenancy agreement, I issue an order to the tenant. Having heard the tenant had sent some complaints to the manager and some complaints to the owner's agent which resulted in delayed communication to the manager, **I order the tenant to direct her complaints and requests to the manager** so that the manager is fully informed and aware of matters involving the property in a timely manner.

Conclusion

The tenant failed to demonstrate that she is hearing anything other than sounds of normal daily activity of another tenant and that the landlord is required to do anything more than the landlord has already done. Therefore, the tenant's requests for orders for compliance and monetary relief have been dismissed.

I have issued an order to the tenancy by way of this decision which is to direct all of her complaints and requests to the manager of the property.

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 27, 2015

Residential Tenancy Branch

