



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CARRERA MANAGEMENT CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

The tenant applies for monetary compensation claiming that the occupants of the apartment above him have been disturbing him with an unreasonable amount of noise.

Though his claim summary does not disclose it, the claim particulars aver to a claim for a rent reduction because the noise is continuing.

Both sides attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant is entitled to compensation from the landlord?

Background and Evidence

The rental unit is a one bedroom apartment in a twenty six unit apartment building. The parties agree it is a very old building; one hundred years old.

The tenancy started in January 2010. The current monthly rent is \$1305.00, due of the first of each month, in advance.

The landlord holds a \$600.00 security deposit.

The tenant testifies that when he rented the apartment he was told that it was a “quiet environment” and was warned that he was to be quiet too. He was told it was an old building and that it had “thin floors.”

Until the early part of this year, the tenant had no complaints about noise coming from the apartment above his. However, in or about May 2015 a family moved in above, including a child of about two years of age.

The tenant says the child would run and stomp in the apartment above and articles, perhaps toys, would be moved across the floor and that the noise disturbed him.

He wrote to the landlord by email on May 10th to complain. In his email the tenant stated that his complaint was not against the tenants above but that the building had insufficient sound barriers between floors and that the suite above “has not had proper flooring installed to prevent unacceptable levels of noise from travelling below.” His email closes with the statement,

I do not blame the occupants of the suite above me for ruining my quiet enjoyment of my rental suite because I feel the fault lies with the state of the building and [*landlord's name redacted for privacy reasons*] decision to not install adequate noise barriers between our two suites.

It is not disputed that the flooring in the building, or at least, in the apartment above this tenant's rental unit, is hardwood flooring, perhaps original to the building.

The landlord's representative Ms. T.K. responded by email the next day indicating it was the first they'd heard of the issue.

On May 23, the tenant emailed the landlord stating, “I assume you were able to confirm if the apartment above me has adequate floor covering. I have been having doubt there was any carpets or proper carpets on their floors.”

On May 26, the landlord's representative Ms. B.F. responded by email indicating that the landlord would be “exploring options to mitigate the noise transfer.” She had been to the apartment above and determined the tenants had “carpet on much of the flooring.”

On May 31, the tenant emailed a reminder to the landlord and stated that the noise was continuing. He described the child's running through the apartment “like my living room

is inside a bass drum.” He indicated that the worst time was between 7 and 10 o’clock in the evening.

On June 15, Ms. T.K. emailed the tenant regarding a number of issues between the parties. Regarding the apartment above, she stated:

This issue is not one that we can provide any true resolution. We can advise that the family currently living above you has requested relocation to a 2 bedroom unit when it comes available. We cannot provide a timeline on when this might occur. *[name of apartment redacted for privacy reasons]* is a 100 year old property and not designed for today’s lifestyle on many levels. We can confirm that we have spoken with the residents above you and advised them that there has been a noise complaint. We have viewed their unit and they do have large area carpets in the unit. They do have a child and I understand that you work shifts and that your wake/sleep patterns are not “typical.” We acknowledge the difficulty with the situation but, we remain limited on *[sic]* our ability to address the needs of each of our Tenants. We will continue to review your concerns.

After that, the issue remained quiet between the landlord and the tenant for four months.

On October 18, the tenant emailed the landlord asking for an update as “the noise problem has not changed over the last few months.” He stated, “[i]f you can tell me the current situation with the noise problem is not going to change that would allow me to start exploring options.”

The tenant testifies that the four month interlude between complaints was because he had anticipated that the tenants upstairs would be moved to a different apartment.

The landlord’s representative sent a reply on October 30 but by then the tenant had brought this application.

It was apparent from other portions of the correspondence between the parties that there had been an issue between them regarding a motor scooter parked outside the tenant’s apartment and regarding mailboxes, a clogged sink and parking. It was agreed that those issues were not issues in this proceeding.

The tenant refers to and relies on clause 17 of the tenancy agreement, which provides:

CONDUCT. In order to promote the safety, welfare, enjoyment, and comfort of other occupants and tenants of the residential property and the landlord, the tenant or the tenant's guests must not disturb, harass, or annoy another occupant of the residential property, the landlord, or a neighbour. In addition, noise or behaviour, which in the reasonable opinion of the landlord may disturb the comfort of any occupant of the residential property or other person, must not be made by the tenant or the tenant's guests, nor must any noise be repeated or persisted after a request to discontinue such noise or behaviour has been made by the landlord. The tenant or the tenant's guests must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the residential property or other person at any time, and in particular between the hours of 10:00 p.m. and 9:00 a.m.

The tenant presents a log of noise incidents for a period of time recorded after his application was made. He says the type of noise, frequency and duration shown in the log is consistent with what had been happening since the disturbances started.

The landlord submitted the report of a flooring contractor who had been retained to inspect the flooring in the building. He determined that the flooring, though old, was serviceable and that in a wood frame building footfall noise is always present in new buildings and in old.

Analysis

What is being complained about? The landlord points out that the tenant's complaint appears to relate to the inadequacy of the building itself and that there is not sufficient damping of sound between floors. It does not directly claim that the child-caused noise is unreasonable.

While the tenant's correspondence may indicated that is how he has framed the problem, I consider his argument to be wider and that the issue is not just whether the building is below standard, but whether or not, in all the circumstances, the tenant is entitled to be compensated for the noise interruptions from the suite above.

As related at hearing, it is not alleged that the landlord or its representatives are causing the noise. The cause of the noise disturbing the tenant is the sound of a two year old child engaged in what appear to be the normal activities of a two year old.

Residential Tenancy Policy Guideline 8 "Right to Quiet Enjoyment" notes that 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.”

In such circumstances, upon receipt of such a complaint the landlord is obliged to investigate and, take such reasonable steps as its investigation warrants.

The evidence shows that the tenant is being disturbed by the noise of the child above. But what level of disturbance is it required that he suffer before the landlord is obliged to intervene?

The tenancy agreement, clause 17 appears to prohibit the tenant, and assumedly the other tenants of the building under identical clauses in their agreements, from any conduct that would disturb other tenants or even conduct the “may” disturb other tenants. This tenant is not a party to the contract with the upstairs tenants and so cannot enforce clause 17 of their tenancy agreement against them. Arguably, the tenant could claim that he is entitled to the benefit of the clause 17 in the upstairs tenants’ agreement and seek compensation for the landlord’s failure to enforce that provision against them.

However, s. 28(b) of the *Residential Tenancy Act* (the “RTA”) imposes a “disturbance standard” on all landlords. It provides that a tenant is entitled to quiet enjoyment, including, but not limited to freedom from unreasonable disturbance.

Section 5 of the *RTA* says that the provisions of the *RTA* cannot be avoided or contracted out of and that any attempt to do so is of no effect.

I find that once a complaint of noise has been made by one tenant against another, the landlord’s lawful duty act to remedy the complaint is engaged when the landlord, acting reasonably, has determined that the disturbance is an unreasonable disturbance, despite what a tenancy agreement may indicate.

It is worth noting in this case that the tenant did not initially complain that the child above was creating an unreasonable disturbance. Rather, he complained that the ceiling above him was not adequate to muffle the sound.

Even had this not been so, a child at normal play in an apartment cannot be said to be creating an unreasonable disturbance. It is a normal activity inherent in the daily living of a family in an apartment.

Has the landlord failed to provide adequate soundproofing between the two apartments? A landlord's duty in regard to providing and maintaining a rental unit is set out in s. 32 of the *RTA*. Section 32 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.

Having regard to all the circumstances, particularly the building's age and wood frame construction, I find that the tenant's rental unit is suitable for occupancy and that the landlord is not required to take special repair steps to soundproof the tenant's apartment from the noise in the apartment above.

Conclusion

The tenant's application must be dismissed.

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: December 27, 2015

Residential Tenancy Branch

