



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MARINER APTS.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O

Introduction

This hearing dealt with a tenant's application with respect to allegations that he is being harassed by another tenant. The tenant and agents for the landlord appeared at the hearing. Both parties 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.

Issue(s) to be Decided

Is it necessary to issue orders for the landlord to comply with the Act?

Background and Evidence

The tenant has been residing in the rental unit since 2005 and is currently paying rent of \$520.00 for a one bedroom apartment. In June 2013 a new tenant moved into the rental unit below the tenant's unit (herein referred to as "the complaining tenant"). Shortly thereafter, the complaining tenant started making complaints to the landlord about noise coming from the tenant's unit.

Initially, the landlord responded to the complaints by approaching the tenant so as to investigate the complaints and the tenant found this disturbing considering many of the complaints were made at night. I heard that more recently when the landlord receives a complaint from the complaining tenant the landlord responds by listening for noise in the hallway and if he does not hear anything, or hears sounds associated with normal daily activity, the landlord does not disturb the tenant or notify him that a complaint was received. The landlord has been taking this approach in an effort to shield the tenant from disturbance. The tenant confirmed that he appreciates and would like the landlord to continue the current practice of not disturbing him when unfounded complaints are received from the complaining tenant.

In the days shortly before the tenant filed this Application, the complaining tenant called the police about noise coming from the rental unit. I heard that the police attended and spent a considerable amount of time in the complaining tenant's unit and were unable to hear any noises coming from the tenant's unit. The police left without approaching the tenant; however,

the landlord was aware of the police visit. The tenant is concerned that the complaining tenant is trying to have him evicted and is aggravated that the complaining tenant is now involving the police.

The tenant suggested that the remedy is for the landlord to persuade the complaining tenant to relocate to another unit or evict the complaining tenant.

The landlord stated that both tenants have been offered the opportunity to relocate to another unit and neither tenant is agreeable to moving. The landlord also stated that the complaining tenant was given the opportunity to give notice to end tenancy without giving a month's notice to the landlord but the complaining tenant has not given notice. The landlord pointed out that the landlord requires sufficient evidence to evict a tenant for cause. The landlord is very hesitant to issue an eviction notice to the complaining tenant without sufficient evidence since the complaining tenant has been litigious with the landlord by taking the landlord to dispute resolution a number of times already. The landlord indicated that they are accumulating all evidence that would support an eviction.

Both parties provided consistent testimony that the complaining tenant may be suffering from mental illness and that the complaints tend to come and go every few months.

Analysis

Under section 28 of the Act, every tenant is entitled to the right to quiet enjoyment. Quiet enjoyment includes freedom from unreasonable disturbance in their rental unit and freedom from significant interference in using common areas of the residential property.

A landlord has an obligation to protect their tenants' right to quiet enjoyment and if the quiet enjoyment of one tenant is breached due to the actions of another tenant the landlord is expected to take action against the offending tenant. That action may include issuance of a Notice to End Tenancy for Cause; however, as pointed out by the landlord, an eviction notice is subject to dispute if disputed the landlord will bear the burden to provide sufficient evidence to support the eviction notice.

It remains upon the landlord to determine whether the landlord has sufficient cause and evidence to support an eviction of another tenant. It is beyond my authority and it would be highly unfair for me to order the landlord to do something that would impact another tenant who is not party to this proceeding. Accordingly, I dismiss the tenant's request that I order the landlord to evict the complaining tenant or somehow force the landlord or the complaining tenant to enter into a new tenancy agreement for another unit at the property.

Any orders that I may issue to the landlord with this decision would have to relate to the tenancy of the tenant appearing before me and I have considered whether is necessary to issue orders to the landlord. Having heard the landlord stopped approaching or disturbing the tenant when unfounded complaints are received from the complaining tenant and the tenant indicated that he

would prefer this practice to continue, I find the landlord is currently taking reasonable action to protect the tenant's right to quiet enjoyment.

As to the call to the police by the complaining tenant, I find that to be outside of the landlord's control especially when the tenant was not awoken or approached by the police when the police attended the property.

In light of the above, I make no orders to the landlord with this decision. However, as suggested to the parties during the hearing, should the tenant be unreasonably disturbed or significantly interfered by the actions of another tenant again, the tenant should provide evidence of such to the landlord so that the landlord can take appropriate action.

Conclusion

I have made no orders to the landlord and the tenant's application has been 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: March 18, 2016

Residential Tenancy Branch