



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes PSF, OLC, FF

Introduction

This hearing dealt with an application by the tenant seeking an order to have the landlord comply with the Act, regulation or tenancy agreement, an order for the landlord to provide services or facilities required by the tenancy agreement or law and an order to recover the filing fee for this application. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Are the tenants entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The tenants gave the following testimony:

The tenancy began on or about “six and a half years ago”. Rent in the amount of \$1374.00 is payable in advance on the first day of each month. The tenants stated that since November 2015 an ongoing “reverberating mechanical noise” has disturbed them, primarily at night. The tenants stated that they have made at least six requests for the landlord to address this noise issue. The tenants stated that all they ask is for the

landlord to investigate and correct the problem. The tenants stated that the noise level, especially at bedtime is intolerable to the point their sleep has suffered.

The tenants stated that their audio recording and decibel meter supports their position. The tenants stated that the landlord has not taken their suggestions of possible causes seriously enough and now seek an order from the Branch to do so.

The landlords gave the following testimony. The landlords stated that they have had four different representatives attend the unit; including the resident managers and the plumber to investigate. The landlord stated that they resident manager has also inspected the adjacent units beside, below and above the subject unit. The landlords stated that each inspection has turned up nothing. The landlords stated that no other tenants have made complaints about any ongoing mechanical noise. The landlord stated that they have taken each of the tenants' suggestions seriously. The landlords stated that they would gladly correct the issue, if there was one, but there isn't.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, **the tenants must prove their claim**. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails

I have reviewed the documentation submitted by each party and considered their testimonies. I find that the tenants' submission that all of the landlords' representatives that inspected the unit must have "mild to moderate hearing loss" as the reason they couldn't hear the ongoing mechanical noise to be without merit and of no weight. I found the landlords' manager AB testimony to particularly helpful. He stated that he was in the subject unit and could not hear any mechanical sounds. AB questioned the accuracy of the tenants' decibel meter when the two were standing in absolute silence

and it picked up high readings. He was also in all of the adjacent units. He advised the subject tenants to contact him when the noise occurred so that he could hear it himself, the subject tenants did not contact him. Based on the above, the lack of sufficient evidence, and on a balance of probabilities, the tenants have not satisfied me of their claim, accordingly; I dismiss their application.

Conclusion

The tenants' application is dismissed in its entirety.

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: April 14, 2016

Residential Tenancy Branch