



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF

Introduction

This hearing dealt with cross applications. Both parties have filed an application seeking “Other” remedies on their application. The landlord has also applied for the recovery of the filing fee. 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

Is either party entitled to other remedies under the Act, regulation or tenancy agreement?

Background and Evidence

The tenant gave the following testimony. The tenancy began on or about February 15, 2010. Rent in the amount of \$742.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$332.50. The tenant stated that the tenant that lives above her makes excessive noise that prevents her from having quiet enjoyment of her suite. The tenant stated that the problem began the day she moved into the unit.

The subject tenant stated that the tenant above her has her television on too loud and that she gets up in the early morning hours and moves about her unit slamming cabinets, drawers and banging her walker. The subject tenant stated that the noise is more prevalent in the fall and winter months when the tenant doesn't have the speakers to her television set next to her. The subject tenant stated that the noise level has gone down since she filed this application. The subject tenant stated that all she asks is that the noise stops and she will be very happy.

The landlords gave the following testimony. The landlords stated the subject tenant's application lacks any merit or credibility. The landlords stated that the subject tenant is complaining about a 92 year old woman who is just going about her daily routine of moving about her unit and living. The landlords stated that the elderly tenant has complied with the landlords request in attempts to resolve this problem. The landlords stated that they have managers that do "sound checks" of the 92 year old tenants suite 2-3 times per day to make sure her television is at a reasonable level. The landlords stated the 92 year old tenant is hard of hearing and has occasionally had the television on loud but none of the other tenants that are adjacent to her unit have complained.

The landlords' stated that the subject tenants expectation of absolute silence in a complex with 51 suites is unreasonable and that the management staff are running themselves ragged trying to address the subject tenants constant but unfounded complaints. The landlords stated that they filed an application in the hopes the subject tenant will stop making unfounded or meritless complaints or she should move somewhere else that suits her needs.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties and witness, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The relationship between these parties is an acrimonious one. It was very clear to me during the hearing the level of exasperation and frustration from all those concerned. After reviewing the documentation and testimony, I find that the tenant has failed to provide sufficient evidence to support her claim. I agree with the landlord's that there must be some reasonable level of expectation in regards to noise when living in such a large complex. In addition, the subject tenants' examples of the noise disturbances coming from 92 year old tenant were examples of someone just going about their daily routine. I find that the actions of the 92 year old tenant to be reasonable and not to an extreme level that would breach the subject tenants' quiet enjoyment. Furthermore, I find that the landlords have done everything they could possibly do to address the issue. Based on the above and on a balance of probabilities, I dismiss the tenants' application.

The landlords have filed their application to seeking to stop the tenant from making any further noise complaints. The Act does not allow an arbitrator to make pre-emptive orders for something "that might happen". The tenant cannot be restricted from making

a complaint if there are grounds or cause to do so. Based on the above and on a balance of probabilities, I dismiss the landlords' application.

Conclusion

The tenants' application is dismissed.

The landlords' application is 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: June 14, 2016

Residential Tenancy Branch