



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing addressed the tenant's application pursuant to section 62 of the *Residential Tenancy Act* (the "*Act*") to order the landlord to comply with the *Act*, regulations or tenancy agreement.

Although the landlord submitted written evidence prior to the hearing, the landlord did not participate in the conference call hearing, to present their evidence. Pursuant to 7.4 of the Rules of Procedure when a party does not attend a hearing the arbitrator is not required to review their evidence. Accordingly the landlords' evidence does not form any part of my decision. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that the landlord was personally served with the tenant's application for dispute resolution hearing package ("Application") on May 7, 2016. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's Application on May 7, 2016, the day it was served.

Issue(s) to be Decided

Is the tenant entitled to an order for the landlord to comply with *Act*, regulations or tenancy agreement?

Background and Evidence

The tenant testified that this tenancy began on July 1, 2011 on a month-to-month basis. Rent in the amount of \$320.00 is payable on the first of each month. The tenant remitted \$290.00 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant testified that at the start of his tenancy the building housed primarily seniors and approximately four years ago when the current landlord took over management, the

building changed to house the hard to house. The tenant circulated a petition amongst the current building tenants in relation to drug use and noise. The tenant complained about noise in the form of slamming doors and overall noise in general that interfered with his sleep. The tenant presented four witnesses that attested to noise, drug use and drug dealing that has occurred since the current landlord took over management. In the hearing the tenant indicated that he seeks to have the landlord remove the hard to house and revert it to a seniors building.

In the tenants submitted evidence he indicated that he reported a particular renter who consistently created a drumming noise, to the landlord on a number of occasions. He indicated that at the direction of the office manager he contacted the police regarding the noise and then finally upon recommendation of the police he began a petition related to the noise and submitted a copy to the landlord. The tenant indicated that the landlord began security and safety upgrades but did not address the noise of the one particular renter. In the tenants written application he seeks to require the landlord to manage other tenants that breach the right to quiet enjoyment appropriately.

Analysis

A tenant is entitled to quiet enjoyment of the rental unit. Under section 28 of the *Act*, quiet enjoyment includes freedom from unreasonable disturbance and use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant's right to quiet enjoyment may be breached by "unreasonable and ongoing noise". A tenant does not have to end a tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment; however, it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behavior. A tenant may file a claim for damages if a landlord either engages in such conduct or fails to take reasonable steps to prevent such conduct by employees or other tenants. 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.

Based on the tenant's written submission, I am satisfied that the tenant notified the landlord that a problem of noise existed and the landlord attempted to rectify the problem but was only partially successful. Therefore I order the landlord to comply with section 28 of the *Act* and caution the landlord that noncompliance could result in a tenant claim for financial remedy under the *Act*.

Conclusion

I order the landlord to comply with section 28 of the *Act* and ensure the tenant is free from unreasonable and ongoing noise, particularly from the one specific renter.

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