



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC, FF

Introduction

The tenant applies for a compliance order and a monetary award for damages relating to excessive noise coming from the apartment above.

The tenant has given her notice to end the tenancy at the end of August 2016 and so it is agreed that a compliance order would not be appropriate at this late stage of the tenancy.

It was agreed that the written tenancy agreement denotes the limited company as the landlord, not the individual named respondents.

Both parties 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 show that the landlord has done or failed to do something it is obliged to do by the law or the tenancy agreement and that the tenant has suffered loss as a result?

Background and Evidence

The rental unit is a one bedroom apartment in a 101 unit apartment building.

The tenancy started in March 2015 for a one year term and continued on a month to month basis after the term's expiry. The monthly rent is \$1337.00. The landlord holds a \$650.00 security deposit.

The tenant testifies that there is excessive noise coming from the apartment above hers. She says that the start of the noise in August 2015 coincided with the landlord's removal of carpeting and installation of laminate flooring in the apartment above.

By November the tenant felt the noise was disturbing enough to complain to the landlord. She told the landlord that in the spring of 2015 she was home sick and heard construction in the unit above and ever since then she hears "everything."

The landlord's resident manager responded saying that it was "likely" due to the installation of laminate flooring and that she would ask the tenants above to be aware of the noise and act accordingly.

The noise into the tenant's apartment did not abate. Between November 5 and November 24 she kept a "noise log." It describes ten days during that period when the tenant was disturbed by noise. The various noises are described as, loud banging, thumping, knocking, drawers opening, chairs scratching, an alarm clock, assorted noises and random noises.

The tenant says she tried to record the sounds but was not reasonably successful.

The tenant suffers from a condition she describes as "adrenal fatigue" and that she requires a lot of rest and sleep. As a result of the noise she has had to stay elsewhere on occasion and is now moving because of the noise.

She provides some evidence to indicate that an increase in noise transmission is common in accommodation below a floor that has been converted from carpeted to laminate flooring

Ms. C. is the apartment building's resident manager. She presents a statement from the tenant who has lived above for four years in which he indicates that he is a quiet man who only stays at the apartment for work in the city during the week and sometimes on a weekend, his main home being elsewhere and that occasionally his wife and/or child will be there.

The tenant says the tenant above told her he was there more often than the statement says.

Ms. C. acknowledges that the floor above was changed from carpeting to laminate flooring in August 2015. She says a sound dampening underlay was installed below it. She disputes that more noise is now coming through the floor.

Ms. C. testifies to a particular incident when, in January, the tenant complained to her of furniture being scraped on the floor in the apartment above. Within minutes Ms. C. confirmed that no one was at home in the apartment above; that tenant's car was not in the assigned parking space, there was no answer at the door and no lights could be seen in the apartment from the outside of the building. No one had scraped furniture across the floor of the apartment above.

Ms. C. claims that the tenant never invited her or her co-manager husband in to hear the noise. The tenant disputes this saying that on the occasion when managers wanted to come to hear the noise she was sick with a strep throat.

Mr. A.A. for the landlord testifies that the building was constructed in the 1960's. He says that only part of each suite was ever carpeted. He confirms that the building material between the tenant's ceiling and the floor of the apartment above is concrete.

He says that he has offered to move the tenant to a different suite but his offer was declined. The tenant says she declined because he did not warrant that the apartment above any new suite would be carpeted.

Analysis

When a tenant reports that she is being unreasonably disturbed by noise from another apartment, it is normally the landlord's obligation to conduct a reasonable investigation and, if the unreasonable disturbance is confirmed, to take steps to abate that disturbance. On occasion this may even mean evicting the noisy tenant.

A landlord who conducts such an investigation and reaches the reasonable conclusion that the complaint is not warranted or that the "noisy" tenant is within his rights, is not open to a claim for damages.

In this case the evidence presented during this hearing shows that the landlord did conduct an investigation immediately upon receipt of the tenant's November complaint. It was obviously concluded that the noise coming from the apartment above was the noise of normal living. No steps were taken against the tenant above other than to request that he accommodate the applicant tenant by being quieter.

Occasional thumping, banging or knocking, chairs being moved on a floor, a drawer being opened or an alarm clock going off are, I find, the noises associated with normal living.

Having regard to the age and construction of the building and the relatively modest rent level for the rental units inside it I find the noise the tenant was exposed to not to have been beyond what one might expect.

On this analysis the tenant's claim must fail.

There is another aspect to the dispute. When the tenant rented her apartment the noise level from the apartment above was, I assume from the lack of complaint, reasonable to her. That changed when the landlord replaced the flooring in the apartment above. By the actions of the landlord, not the tenant above, the noise in the tenant's apartment increased.

In my view the landlord was entitled to change the flooring from carpet to laminate, as it had done in a number of other suites in the building. It is a common renovation. The tenant had perhaps enjoyed the benefit of a more muffled noise from above, yet, I find, the sound of normal living she was hearing after the laminate was installed has not been shown to be excessive, have regard to the factors referred to 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: August 05, 2016

Residential Tenancy Branch