



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC

Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenant has applied requesting an order the landlord comply with the Act and to recover the filing cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant supplied three pages of evidence to the Residential Tenancy Branch on August 3, 2016. The tenant could not recall serving that evidence to the landlord and the landlord did not have the evidence. Therefore, those three pages were set aside. The tenant was at liberty to make oral submissions.

The parties confirmed receipt of the balance of the evidence with no dispute in relation to time limits.

Issue(s) to be Decided

Must the landlord be ordered to comply with the Act?

Background and Evidence

The tenancy commenced on December 1, 2015. The tenant resides on the third floor of a four floor, wood-framed building; built pre-1970. The building does not have elevators.

The tenant said that when she first moved into the unit there were many issues with people running down the halls and loud music. The issue related to running down the

halls was solved; it was children playing during the day. The tenant reported the problems and the landlord responded.

On March 3, 2016 the tenant wrote the CEO of the company that manages the rental building. The tenant recognized the efforts of the landlords' on-site agent to address the tenants concerns. The tenant wrote that the regional manager did not communicate well with tenants and was reluctant to deal with problems. The tenant reports that people above her unit run back and forth and up and down the stairs. On one occasion someone yelled from the parking lot at three or four a.m. People are smoking pot and an older man on her floor has "jam" sessions in his apartment. One person honked his horn for five minutes. The tenant alleged people were selling drugs from the building, that there were no door sweeps or hydraulic brackets on fire doors, so they would be quiet. The door slam shut day and night. The tenant did not receive a reply.

On June 2, 2016 the tenant wrote the CEO again, setting out problems she had with management of the building. The tenant has picked up medical supplies left in the stairwells; there is an odour of marijuana and the occupant above the tenant is dumping dirty water over his balcony onto the tenants' balcony. The person above the tenant shakes his rugs and plays country music so the tenant cannot watch TV. The side doors are slamming and left propped open. Notices for repair are not being given and renovations completed above the tenant were loud, over 12 hours a day for a month, with no compensation offered.

The tenant said she made repeated telephone calls to the landlord to express her concerns. In late June 2016 the regional director called the tenant. He was aware of the tenants' application and said they were "fixing things."

The tenant said someone went into her unit when she was out. There were foot prints in the unit. At the tenants' request the landlord had the unit re-keyed.

When asked if the main disturbances were originating from the unit above her, the tenant responded that she cannot go on her patio as the occupant above had thrown peanut shells onto her deck; they were in her plants and could have made her grandson ill. Dirty water has flowed onto her patio furniture, the occupant above the tenant bangs around and scares the tenants' cat and he slams doors. The occupant above gets up early in the morning and walks around with work boots on.

The tenant said the other disturbances have ceased but for a whole month she had to listen to the sounds of the balcony repair. The tenant does not want to listen to the sounds of stomping above her. At one point the occupant above had a metal pole down the front of his deck and he flicks cigarette butts off the deck. The occupant above plays loud music and it could be heard by the police in the neighbouring school parking lot.

When asked what contact the tenant has had with the landlord since June 2016 the tenant said that the landlord was going to proceed with some evictions, but the landlord

will not provide any detail on those actions. The sounds from the upper unit have not ceased.

The tenant wrote the landlord on July 8 2016 to complain that of a loud noise at 6:00 p.m., a door slammed on the 7th and at 10:30 p.m. there was another loud bang which scared her pet. At 1:15 a.m. the tenant could hear deck furniture being moved; the furniture was being blown in the wind. The tenant was awakened at 6:00 a.m. to the sound of boots on the floor. The tenant also complained that there was still a rope hanging down from the flag that was erected on Canada Day. The tenant wrote that the disturbances were affecting her health.

The landlord said they have responded to complaints issued by the tenant and provided copies of emails sent to the tenant. In relation to renovations, notices have been posted in the building and each tenant was given a copy under their door. Copies of notices regarding repairs were supplied as evidence.

The unit above the tenant has carpeting and underlay which was installed in March 2016. The water falling onto the tenants' deck was resolved by a repair project. The upper balcony had to be leveled, at a cost of \$3,000.00. The occupant was not pouring water from his balcony.

On February 26, 2016 the landlord responded to the tenants' concern that they could not stop people from using the stairs in the evenings but they could issue warnings regarding noise if it occurred after 10:00 p.m. The regional manager wrote she is at the building weekly and if any illegal activity was noted they would respond. The landlord offered to install a door sweep and weather stripping around the tenants' door.

O May 30, 2016 the landlord wrote a letter to the party who rents the unit above the tenant and warned of issues of water and noise disturbances.

On June 29, 2016 the landlord followed up with the tenant, after she had had a conversation with the Regional Director. A new door was recently installed on the south side of the building and the deck above the tenant had been repaired. The landlord explained that in the past three weeks they had successfully evicted three occupants who had caused problems in the building. On July 4, 2016 the landlord wrote the tenant that they had issued letters of warning to other occupants and that they would follow the legislation in relation to dealing with other tenants.

A July 11, 2016 email from a person who previously worked at the building explained that the units above the tenant were occupied by people who work 6:00 a.m. to 6:00 p.m. and they are home in the evenings. The tenant has been reminded that she lives in a residential building and that tenants cannot be stopped from using the stairs in the evening and that items accidentally dropped on the floor will cause sounds.

The landlord emailed the tenant on July 8, 2016 to explain that any eviction is a long process and that they do their best to ensure tenants are happy. At that time there was

insufficient evidence to evict the occupant of the unit above the tenant. The landlord offered to allow the tenant to break her lease.

On August 8, 2016 the landlord issued a second notice to the resident of the unit above the tenant. The occupant was directed to keep sounds at a low level between 10:00 p.m. and 9:00 a.m. This served as a first warning to the occupant. On August 1, 2016 the tenant complained that the upper occupant hung clothes on the balcony causing drips to the tenants' patio. The landlord directed the occupant not to do that.

Email evidence indicated that on August 29, 2016 the tenant complained of noise from above her unit caused by a washer and dryer. The landlord told the tenant that unit does not have a washer or dryer. The landlord investigated the allegation of peanuts and the upper occupant said he had not been eating peanuts.

The landlord has offered to end the tenants' lease and offered her a unit at another building with comparable rent. No other complaints are being issued by any other occupants of the building.

Analysis

I have considered section 28 of the Act, which provides:

Protection of tenant's right to quiet enjoyment

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

From the evidence before me I find that the tenant has described events that would not be unexpected when one resides in an older wood-framed building occupied by multiple individuals, some of whom live above the tenant. The sounds of normal day-to-day living such as people going up the stairs, closing doors and dropping items are the normal sounds one can expect to hear.

There was no evidence before me of multiple disturbances after 10:00 p.m. The incident involving the peanuts was unusual, but there was no evidence that this repeated and no evidence as to where the shells originated.

From the evidence before me I find that the landlord does take the reports of disturbance seriously and has taken steps to communicate with other occupants and to evict occupants. There was no evidence of negligence on the part of the landlord and, in

fact, I find that the landlord demonstrates an understanding of the right to quiet enjoyment. The landlord has issued notices of repair and has an obligation to repair. Some day-time sounds can be expected when repairs are carried out. Therefore, I can find no basis to issue an order that the landlord comply with the Act.

The tenant may wish to explore alternatives to living on a lower floor, near exit doors and a stairwell. The location of her unit certainly appears to contribute to the disturbance the tenant says she experiences.

As there is no basis for an order I find that the application is dismissed.

Conclusion

The application is dismissed.

This decision is final and binding and 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: September 29, 2016

Residential Tenancy Branch