



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FAIRFIELD HOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, O

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested an Order pursuant to section 62(3) that the Landlord comply with the *Residential Tenancy Act*.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Should the Landlord be ordered to comply with the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified that he moved into the rental property in either 2013 or 2014. He confirmed that the rental unit is in a hotel located above businesses. He stated that he has his own room with a bathroom and sink and he shares a bathroom with other renters. He confirmed that his monthly rent is \$400.00 per month which includes cleaning staff employed by the Landlord cleaning his room on Wednesdays.

Introduced in evidence was a letter from the Tenant's Advocate dated March 4, 2016 wherein the writer indicates that the Tenant's concerns originate from an art gallery below the Tenant's unit which is used for Samba dance classes and social gatherings in the evenings.

The Tenant testified that when he first moved into the rental unit he was informed that the art gallery would only be used for dance classes and social gatherings on weekends. He stated that at present the space is used for that purpose on other days as well and is "loud all the time". The Tenant confirmed that sometimes the events start at 6:00 p.m., but also later, but that in most cases the sound continues until 12:30 a.m. or 1:00 a.m.

The Tenant stated that as a result of the noise from the art gallery he is not able to sleep which has impacted his ability to work.

The Tenant testified that he spoke with the resident manager, D.W. on May 1, 2016 about the noise. The Tenant stated that in response D.W. told him that if he tried to stop the functions, the owner would have the Tenant evicted as the Landlord would lose \$6,000.00 per month in rent from the art gallery.

The Tenant stated that there are 20 units in the rental building. The Landlord's representative, L.W., interrupted the Tenant's testimony and stated there were in fact 64 units.

Also introduced in evidence was a letter from D.W., (upon which someone has written "Received July 15/16"). In this letter D.W. reminds the Tenant that the noise bylaw is until 10:00 p.m. on Sundays and 11:00 p.m. on Fridays and Saturdays.

The Tenant claims that other renters have been concerned about the noise but do not wish to be involved in this dispute. He stated that he was aware that a woman moved out because of the noise. None of these people testified at the hearing.

The Tenant stated that there are vibrations which are so excessive that his skin stings. He also stated that his eyes vibrate in his skull. The Tenant stated that after he called the police the vibrations went down to where he could actually function.

When I asked the Tenant what was causing the vibrations the Tenant said "somebody down there". He said the vibration is coming from inside the building not the construction next door.

The Tenant stated that he has called the police on numerous occasions.

The police reports provided by the Tenant indicate that while the police have attended to investigate his complaints, they have found them to be unfounded. Introduced in evidence was a copy of a redacted police report wherein the constable writes that s/he attended the residence and did not perceive the noise to be unreasonably loud. She also writes that "No other residents of [address of rental unit] have made complaints of excessive noise against the gallery".

The Tenant testified that he has called the police on numerous occasions and that on July 23, 2016 he called the police for the final time.

The Tenant stated that the functions stopped at that point, but the amplifiers were turned up to such an extent that the building vibrates and shakes. He also stated that the wood was separating as a result of the vibrations. The Tenant stated that it seemed like they were trying to destroy their own building to make him as uncomfortable as possible.

When I asked the Tenant whether there have been any discussions about moving him from his current room to another, the Tenant stated that he does not want to move as there are no bed bugs in his unit, it is a "fairly decent place", and he is very happy with where he is placed and he doesn't want to move.

The Tenant further stated that another renter moved out of the building because of noise, and she as on the other side and that the sound from the functions emanates throughout the building such that moving to another unit would not solve the problem.

The Tenant further claimed that the room adjacent to him, Room 27, plays his music very loud. The Tenant stated that D.W. tried to deal with Room 27, but the guest started threatening D.W.

The Tenant further testified that stated that the room above him, started making noise after July 23, 2016 and that he believes they are all trying to force him to move out.

In terms of the relief sought, the Tenant stated that he wants the Landlord to discontinue renting the space to the dance company.

L.W. testified on behalf of the Landlord. L.W. stated that the lower level is commercial and is currently rented to an art gallery owner and a hair salon. L.W. stated that 3-4

times a week the gallery is used by a dance company for lessons and social gatherings. L.W. confirmed that the renter who rents the gallery sublets to the person who operates these dance classes.

L.W. confirmed that the Tenant was informed of the dance lessons and social gatherings when he moved in. He further stated that he had no knowledge of the Tenant's claim that the dance classes were only supposed to be on the weekends, not during the week.

L.W. stated that the only person who has complained about the noise from the dance classes is the subject Tenant.

L.W. stated that the Tenant is a good tenant and they don't want to lose him. L.W. also stated that they take his complaints seriously. L.W. also stated that as soon as they received a complaint from the Tenant that the sound was happening after 10:00 p.m. they spoke to the owner of the dance class. L.W. further stated that they have also called the police when the music has gone on too late. L.W. confirmed they are doing all that they can and that in all instances have responded promptly to the Tenant's concerns.

L.W. further stated that the gallery noise issue has been resolved and that to his knowledge the gallery patrons do not play music at an excessive beyond the time required by the municipal bylaw. He further stated that he was surprised when he received the Tenant's Application as he believed the issue had been resolved.

L.W. further stated that any shaking or vibration is likely due to the large construction site which is 100 feet from the rental unit where there are two cranes operating daily.

L.W. stated that in the spring of this year, they offered the Tenant another room in the rental building further away from the dance studio but the Tenant declined. He said it was one floor up and down the hall and had a window facing out similar to the current unit.

L.W. stated that the management keeps a log book of all complaints. That log book was not provided in evidence. L.W. confirmed that when there are complaints they go downstairs and show the dance studio the municipal bylaws. L.W. also stated that there have been times when the Tenant has made noise complaints about the gallery, yet the gallery is empty. L.W. reiterated that the only complaints received regarding the gallery are from the Tenant.

L.W. stated that the Landlord feels that they simply cannot please the Tenant. They feel that they have taken all the steps as required that in any case, they are on the Tenant's side.

In reply the Tenant stated that the Management are not working with him, in fact over a dispute over his lock, L.W. stated "if you don't like it, why don't you just leave".

Analysis

The Tenant seeks an Order pursuant to section 62(1) that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement. For greater clarity this section reads as follows:

Director's authority respecting dispute resolution proceedings

- 62** (1) The director has authority to determine
- (a) disputes in relation to which the director has accepted an application for dispute resolution, and
 - (b) any matters related to that dispute that arise under this Act or a tenancy agreement.
- (2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.
- (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.
- (4) The director may dismiss all or part of an application for dispute resolution if
- (a) there are no reasonable grounds for the application or part,
 - (b) the application or part does not disclose a dispute that may be determined under this Part, or
 - (c) the application or part is frivolous or an abuse of the dispute resolution process.
- (5) [Repealed 2006-35-86.]

Although not specifically stated by the Tenant, he appears to be alleging the Landlord has breached his right to quiet enjoyment as a result of allowing the commercial tenants below his rental unit to make excessive noise and failing to address the Tenant's concerns in a timely and reasonable manner.

The Landlord submits that they have responded to the Tenant's concerns promptly, have dealt with the commercial tenants by informing them of the bylaws and calling the

police when necessary and have also offered solutions to the Tenant (in the form of moving him to another rental unit) which was refused by the Tenant.

After careful consideration of the evidence before me, the testimony of the parties and on a balance of probabilities I find as follows.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case the Tenant bears the burden of proving his claim.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

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.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

“...Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

...Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...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.

...In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed...”

I find the Tenant has failed to prove the Landlord breached section 28 of the *Act*. I accept the Landlord's evidence that they addressed the Tenant's concerns in a timely and reasonable manner and that they have taken reasonable steps to address the Tenant's concerns.

I further note that the Tenant was informed at the start of his tenancy that the art gallery was used in the evenings for a dance studio and for social gatherings. Therefore, the Tenant was aware of the potential noise when he agreed to rent the rental unit.

The Tenant alleges that other renters have similar concerns but are unwilling to testify. The Landlord testified that the only complaints received about the art gallery, are from the Tenant. The Tenant bears the burden of proving his claim and without further evidence to support the Tenant's position, I am unable to prefer the Tenant's testimony over that of the Landlord.

I am also persuaded by the police reports introduced in evidence by the Tenant wherein the writer notes that s/he did not observe an unreasonable amount of noise when she attended the Tenant's call and that no other occupant has complained about the noise. In one such report, dated February 3, 2016, the writer indicates "On arrival I found a local Ballroom Dancing group enjoying some music (not excessively loud)." In two such reports, dated February 21, 2016 and August 14, 2016 respectively, the writer indicates that the art gallery was empty on the date the Tenant made a noise complaint. These reports do not support the Tenant's claims that the art gallery occupants are excessively loud, merely that the Tenant routinely complains about the noise.

The Tenant submitted numerous pages of a calendar and log he created to document the alleged noise complaints. While these clearly indicate his displeasure with the sound from the art gallery, they do not support a finding that the noise is excessive, or that the Landlord has failed to address reasonable noise complaints.

Further, I find that the Landlord offered the Tenant a reasonable solution, namely that he could move to a quieter part of the rental building. The Tenant's failure to take advantage of this opportunity belies understanding considering his claims as to the effect of the noise on his health. I accept the Landlord's evidence that the further a rental unit is away from the gallery the less disruptive the sounds from the dance lessons/social gatherings would be. The Tenant, in failing to accept this solution and move away from the source of the noise, has failed to mitigate any of his losses.

In all the circumstances I decline the Tenant's request that I Order the Landlord to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement as I find the Landlord has reasonably responded to the Tenant's concerns and taken steps to address his noise complaints.

For these reasons, I dismiss the Tenants claim.

Conclusion

The Tenant's claim 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: November 9, 2016

Residential Tenancy Branch