



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed that there was no issue with service. The parties confirmed that the tenant served her dispute resolution package on the landlord by registered mail on November 25, 2016. In accordance with section 89 of the Act, I find that the landlord was duly served with the tenant's application package.

Issue(s) to be Decided

Is the landlord in breach of the Act, regulation or tenancy agreement by failing to ensure the tenant has quiet enjoyment of the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties agreed on the following facts. This fixed term tenancy began on August 27, 2016. The tenant and her adult son live on the second floor in one unit of a multi-unit rental apartment. There is another tenant who resides in the unit directly above the tenant (the "Neighbor").

The tenant testified that since moving into the rental unit the Neighbor has had young children over on a regular basis creating loud noise and disturbing her. The tenant

stated that young children visit almost every weekend and during that time there are constant sounds of running, jumping, and roughhousing from upstairs. The tenant testified that the noise and vibrations from upstairs have resulted in picture frames being shaken off the walls and objects falling from shelves. The tenant testified that the sounds are so loud that she is unable to carry on conversations or watch television at regular volumes. The tenant testified that children stay with the Neighbor from Thursday afternoon to Sunday afternoon. When the Neighbor has the children over the noise begins around 7 am and continues intermittently throughout the day until about 10pm.

The tenant's witness also resides in the rental unit and has characterized the effect of the noise and vibrations in the rental unit as being like an earthquake. The witness believes that there are about 4-5 children who visit and stay over on any given weekend. The witness testified that on days when the children are not present some footsteps are audible from the Neighbor's unit but are manageable. The witness testified that the tenant is older and has some health issues. He testified that the noise and disturbance have had a detrimental effect on the tenant's health and he is concerned that she may require medical intervention if the current situation continues.

Both the tenant and her witness testified that they have attempted to initially resolve the issue by discussing their concerns directly with the Neighbor. They testified that the discussions have not led to long term results as the noises inevitably start up again. They testified that they have informed the landlord of the issue verbally, in writing and by email to have the landlord take action.

The tenant submitted written evidence that she informed the landlord of her issues with the Neighbor on October 10, 2016 and subsequently informed the landlord by email on October 16, 2016 that the noise level had somewhat subsided. The tenant testified that after sending the email the noise began escalating once again and she sent another email to the landlord on October 30, 2016 to advise her of the situation. The landlord responded to the tenant in an email dated October 31, 2016, advising the tenant that the landlord would be talking with the Neighbor. The tenant testified that the noises continued and she sent a letter to the landlord dated November 12, 2016, advising the landlord of the continued disturbance. The tenant testified that the noise occurs almost every weekend and the landlord has not taken action to make the Neighbor curtail the disturbance.

The named landlord (the "Landlord") is an employee of a property management company responsible for the rental unit, as were the landlord's witnesses. The Landlord testified that since receiving the complaints from the tenant she has taken steps to

address the issue of noise. She testified that she has given verbal warnings to the Neighbor and has sent several emails and a written warning to correct the disturbance to the tenant. The Landlord testified that the property management company has procedures in place regarding the appropriate steps to take when dealing with complaints about tenants. The Landlord testified that while she is not authorized to inform the tenant details of the discussions with the Neighbor, she is taking action to correct the issue.

The landlord's witness WG testified that the rental building is approximately 20-25 years old. The witness testified that some sound will be heard through walls and floors due to the age of the building. The witness testified that he was not aware of any way in which to soundproof the units that did not require major renovation to the building.

The landlord's witness MB testified that there are only two individuals residing in the upstairs unit according to the tenancy agreement. Any children who visit are guests and not residents. The witness confirmed that there have been verbal warnings and written notices issued to the Neighbor regarding the noise complaints. The witness testified that there have been no additional complaints made by other residents of the building against the Neighbor. The witness said that it appears the tenant, residing in the unit directly below the Neighbor, is most disturbed by the noises of jumping from above.

Analysis

The Act sets out at section 28 that a tenant has the right to quiet enjoyment of their rental unit as follows:

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.*

While I accept the evidence of the tenant that the Neighbor's noise is at a level and frequency that requires intervention by the landlord I find that the landlord is taking the necessary and appropriate steps to resolve this issue. Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required. The landlord described an appropriate process that has been initiated to address this matter with the Neighbor. The landlord testified that the process is ongoing and should the noise complaints continue unabated further steps will be taken. I accept the landlord's evidence that appropriate measures are being taken to address the tenant's concerns. I see insufficient evidence to demonstrate that the actions taken by the landlord have been inappropriate or inadequate under the circumstances.

Conclusion

The tenant's application is dismissed with leave to reapply.

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: January 11, 2017

Residential Tenancy Branch