



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FF

Introduction

These hearings dealt with an Application for Dispute Resolution filed by the tenant to have the landlord comply with the Act, and to recover the filing fee for this application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided

Should the landlord be ordered to comply with the Act?

Background and Evidence

The tenancy began on March 1, 2014. Rent in the amount of \$1,100.00 was payable on the first of each month. A security deposit of \$550.00 was paid by the tenant.

The tenant testified that for three years they have lived in the rental unit and that they have been bothered by unreasonable noise for the occupants that live above them. The tenant stated that the occupant above them are walking in their shoes, the child is running, jumping and bouncing and the boyfriend has heavy footsteps and he wears their shoes. The tenant stated that this ongoing noise is a breach of their rights to quiet enjoyment.

The tenant testified that they have provided the landlord with three letters over the course of the tenancy and the landlord has failed to rectify the problem. Filed in evidence in support of the tenant is an itemized list of noise from January 17, 2017 to March 28, 2017.

The landlord testified that they told the tenant at the start of the tenancy that the building is made of wood construction and that the noise travels. The landlord stated that they have only received three complaints from the tenant for the duration of the tenancy and have investigated their complaints. Filed in evidence are copies of the complaints.

The landlord testified that they have spoken with the occupant that lives above the tenant and they deny that are causing any unreasonable noise. The landlord stated that they have had complaints from the occupant that the tenant has banged on their ceiling, creating noise in the upper unit and has approached the child.

The landlord testified that they have determined the noise is normal household noise and they are unable to do anything about it as the building is of wood construction. The landlord stated that they offered the tenant a different rental accommodation; however, the tenant did not accept that.

The tenant responded that they did not accept the offer, as it was Christmas time and they could not afford to move at that time.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 28 of the Act states, 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;
- ...

The Residential Policy Guideline #6 deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

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

In this case, I have reviewed the tenant's log of complaints. The complaints set out in the log are walking in shoes, child running, jumping, bouncing, and heavy walking. I find these are normal household noises.

As an example you would expect from time to time that a child, would jump, run or bounce, as those are the normal activities that a child would do when playing, which would be expected as the building is not an adult only building, such as seniors facility. I note the majority of these complaints are during hours that you would expect a child to be playing.

Further, walking whether the other occupants have shoes on from time to time, slippers or socks that is normal household noise. There is no evidence that the other occupants have engaged in

a behaviour that is unreasonable, such as playing loud music or purposely causing disturbances. The landlord has no control on how a person walks, as every person carries their body differently based on their body size, type, and gait.

Furthermore, the relationship between the tenant and the occupant has deteriorated; this could be in part from the tenant's own behaviour of approaching the child and banging on the ceiling causing unnecessary noise to the occupants.

This is a wood construction building, which the noise travels. The tenant was informed of this when the tenancy commenced. I note that these noises have been heard since the tenancy commenced.

I find that the tenant has not met the burden of proof that the noises that they are hearing are beyond normal household activities. I find the tenant has failed to prove the landlord has breached the Act. Therefore, I find it not necessary to order the landlord to comply with the Act as the landlord has taken appropriate steps by investigating the complaints that they have received.

Therefore, I find dismiss the tenant's application without leave to reapply. As the tenant was not successful with their application they are not entitled to recover the filing fee from the landlord.

Conclusion

The tenant has failed to prove a violation of the Act by landlord. Therefore, I find it not necessary to order the landlord to comply with the Act.

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: May 26, 2017

Residential Tenancy Branch