



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order that the landlord comply with Residential Tenancy Act, Regulations or tenancy agreement.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business.

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order that the landlord comply with the Residential Tenancy Act, Regulations or tenancy agreement.

Background and Evidence

The tenancy began on November 17, 2003. The present rent is \$460 per month plus \$10 parking payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$217.50 at the start of the tenancy.

The tenant testified he has been significantly disturbed a nightly basis by the conduct of the tenant who lives immediately above him. It has been quiet since May 3, 2017. The manager has told him to stop giving him notices of complaint.

The landlord testified as follows:

- The tenant who lives above him has gone north to work and will not be returning until December.
- The manager has responded to investigate complaints
- There have been 16 people living in the rental unit above the applicant and he has complained about all of them.
- We give notices where appropriate

Law

Section 28 of the Act provides 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.

Policy Guideline #6 provides as follows:

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

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. This includes situations in which the landlord has directly caused the interference, and situations in which **the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these (my emphasis).**

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it (my emphasis).*

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Analysis

The upstairs tenant has is presently working up north until December 2017 and was not available to give evidence. In the circumstances I determined it was not appropriate to make a determination as to whether the landlord has breached the covenant of quiet enjoyment.

The tenant expressed concern about what will happen when the upstairs tenant returns. I have copied the provisions of the Act and Policy Guidelines relating to the breach of the covenant of quiet enjoyment. The landlord has been put on notice about its responsibilities in situations such as this and the right of the tenant to seek financial compensation.

The tenant testified the landlord told him not to give them any further written notices. I determined the landlord does not have a legal right to deny the tenant the ability to give written notices where the tenant believes there is a breach of the Act.

This decision is final and binding on the parties.

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 24, 2017

Residential Tenancy Branch