



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.
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to the service of the application and evidence on file.

Issues

Should an order be issued requiring the landlord to comply with the Act, regulation or tenancy agreement?

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

Background and Evidence

The tenancy began on October 1, 2016. The rental unit is a two bedroom apartment in a multi-unit complex.

The tenant testified that in March 2017, the tenant directly above her unit (the "upstairs tenant") acquired a new cat. Since this time she has experienced a significant amount of noise which is caused by the cat playing with her toys between the hours of 11:00 p.m. and 9:00 a.m. She sent a formal complaint letter to the landlord on March 27, 2017. The following day, the landlord issued a warning letter to the upstairs tenant. The issue continued and on April 11, 2017, the tenant sent another complaint letter to the landlord. In this letter, the tenant proposed a solution that the upstairs tenant keeps his cat out of the master bedroom during the night time as this area is directly above the tenant's bedroom. The tenant submits she received no response from the landlord to this second complaint letter but instead on May 31, 2017 received her own caution letter for harassing the upstairs tenant in regards to the noise issue. Subsequently, the landlord did approve the tenant's suite transfer request to be moved to a top floor unit.

The tenant submits the landlord is in breach of the Act by not preserving her right to quiet enjoyment. The tenant further submits that the landlord's own tenancy agreement requires quiet enjoyment particularly between the hours of 10:00 p.m. and 9:00 a.m. The tenancy agreement also requires the tenant to ensure that any pets do not disturb any person in the residential property. The tenant is requesting the landlord to comply with the Act and their own rules drafted in the tenancy agreement.

The landlord for the most part agreed with the tenant's testimony. The landlord confirmed that she has verbally spoken to the upstairs tenant and issued a caution letter for the alleged noise disturbance. The landlord testified the upstairs tenant has advised that his cat has anxiety so locking the cat out of the bedroom at night or putting in a cage is not an option. The landlord is of the opinion that they have taken appropriate and reasonable steps in response to complaints of a cat "playing". The landlord testified the rental unit is a pet friendly building and the pet disturbance clause in the tenancy agreement is typically for situation such as a pet constantly barking etc. The landlord has approved the tenant's request and is just awaiting a suitable unit to become available. A unit had become available which the tenant declined due to issues with the carpet.

Analysis

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline #6 "Entitlement to Quiet Enjoyment" provides the following guidance:

In order to prove a breach of the entitlement to quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the rental premises. This includes situations in which the landlord has directly caused the interference or was aware of the interference but failed to take reasonable steps to correct it. It is also necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. Temporary discomfort or inconvenience does not constitute a basis for a breach under this section.

Although the tenant provided evidence to support that she has filed complaints in respect to the noise coming from the unit above, I have no evidence before me to determine if the extent and magnitude of the alleged disturbance, caused by the cat from the unit above, equates to a substantial interference with the tenant's right to quiet enjoyment. The tenant has not submitted any recordings of the extent of the noise which may have helped in making such a finding. In the absence of such, I find that noise from a cat "playing" is not an unreasonable disturbance to be expected in residing in a lower floor of a multi-unit pet friendly complex. I find the landlord has taken reasonable steps to address the issue and agreeing to transfer the tenant if/when a suitable unit becomes available is an appropriate remedy to this issue.

I find the tenant has provided insufficient evidence that there has been substantial interference with her ordinary and lawful enjoyment of the rental premises. The tenant's application is dismissed.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

The tenant's application 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 17, 2017

Residential Tenancy Branch