



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENSON REALTY AND TENANT NUMBER TWO
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC FFT

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 the filing fee for this application from the landlord pursuant to section 72. Originally, the tenant listed "Tenant Number 2" as one of the respondents to this application. While the upstairs neighbours were present at this hearing to give evidence, they are not rightly a party to an application under the Residential Tenancy Act and therefore, I have removed their 'name' from the style of cause.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's application and documentary evidence. The tenant attended for his own application. He resides in the bottom unit of the rental premises. The occupants of the unit above the tenant also attended this hearing to give evidence on behalf of the landlord.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord comply with the Act – in particular, that the landlord required, under the Act, to demand the upstairs tenants remove their shoes in their rental unit? Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began in November 2012 as a month to month tenancy with a rental amount of \$1200.00 payable on the 1st of each month. The tenant testified that until July

2017, he had a satisfactory arrangement with the person residing in the unit above him. The person residing above the tenant prior to July 2017 was the landlord. The tenant testified that the previous landlord had agreed with his request that she not wear shoes in her upstairs unit.

After July 2017, the previous landlord sold her upstairs rental unit to the current landlord. The current landlord rented out the unit to the two people who attended this hearing: Occupant A and Occupant B. The tenant testified that he had made several attempts to reason with the upstairs tenants, asking them to be quieter and, most importantly remove their shoes when inside the rental unit. Occupant A and Occupant B both testified that, despite their best efforts to make the tenant in the downstairs unit happy, he continues to complain to them.

Occupant B testified that he and Occupant A reside in the upstairs rental unit with their children. He testified that, after complaints from the tenant downstairs, they have made their best efforts to reduce the noise from upstairs. He testified that they always have their shoes off in the house unless they are going out immediately again. He testifies that he is not comfortable asking all of his guests to remove their shoes. He referred specifically to the elders in his culture that would likely be offended by such a request. Occupant B testified that he and his wife often entertain the family at their home, particularly at Christmastime.

Occupant B and Occupant A both described an incident that occurred this past Christmas. They both testified that guests had come over for a holiday meal and that the tenant had come to their door knocked loudly and made threatening remarks about what he would do if they didn't quiet down, stop wearing shoes and stomping around: he would ruin their Christmas, he said.

The tenant testified that he gets very emotional about the noise from upstairs because he and his wife both work shift work and their sleep is extremely important. He testified that he has told the upstairs neighbour that he works on night shifts but they are always noisy in the morning. Occupant B responded that her and her husband have children and they must get them to school in the morning so she imagines there is some noise but nothing unreasonable, she testified.

Occupant B testified that she is very uncomfortable and somewhat nervous about seeing the tenant come to their rental unit. She testified that, after Christmas, she was so worried and her children were so nervous, that she now constantly reminds them to be quiet and take off their shoes. She testified that they had put rug down in all the main

traffic areas of the home but that still does not satisfy the tenant. He testified that they are very conscious of the tenant downstairs but it is unreasonable to ask them and their guests to always go without shoes in the rental unit. As well, the tenant is angry at them whenever they vacuum.

The landlord testified that he has tried his best to mediate this situation: he has talked to the tenant on numerous occasions when receiving complaints. He has acted as a go-between with the upstairs neighbours to try to reach some kind of middle ground for all of the tenants. He testified that he offered Occupants A and B compensation for purchasing rugs if necessary.

The tenant submits that he has a right to quiet enjoyment and that it has been ruined by the lack of action of the landlord. He testified that the tenant (applicant in this hearing, living downstairs) has no tolerance at all for noise or activity when he is sleeping. He testified that he attempted to bring the parties together to discuss some sort of remedy for this situation but the tenant would not meet with the landlord and the upstairs neighbours. He testified that he has warned the tenant twice about his aggressive behaviour in attending to the occupants' home upstairs and yelling, threatening them. He testified that he does not believe he can insist that the upstairs occupants never wear their shoes indoors. He stated that this seems unreasonable.

The tenant testified that the sound from upstairs has lessened lately and is an improvement however he still sought an order that the landlord order the upstairs tenants to not wear shoes in their home.

Analysis

Pursuant to section 32 of the Act, Residential Tenancy Policy Guideline No. 1 provides the nature of each party's obligations during the course of a tenancy,

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.

Under section 28 of the Residential Tenancy Act, a tenant is entitled to quiet enjoyment, including, but not limited to the rights to: "reasonable privacy; freedom from

unreasonable disturbance; exclusive possession, subject to the landlord's right of entry under the Legislation; and use of common areas for reasonable and lawful purposes, free from significant interference". Quiet enjoyment does not include minor disruption.

Residential Tenancy Policy Guideline No. 6 provides the nature of the landlord's obligations in terms of the tenant's entitlement to quiet enjoyment. To find that a tenant's right to quiet enjoyment has been breached requires a finding of "substantial interference with the ordinary and lawful enjoyment of the premises". In circumstances where a claim to a breach of quiet enjoyment is raised by the tenant, that breach may be as a result of the direct actions of the landlord or a failure to correct a disturbance by others. However, a landlord has an obligation to all of his tenants equally. In providing the liability of the landlord, Policy Guideline No. 6 requires that the landlord:

1. Was aware of the problem
2. Failed to take reasonable steps to correct it.

A claim for breach of quiet enjoyment by a tenant often involves a request for compensation or a request to end a tenancy early as a result of the lack of quiet enjoyment. In the tenant's application, he wrote, "the tenants upstairs ...were warned before they moved in that they could not wear shoes because there is ceramic tile and hardwood." I was assured by the owner and the management company that this stipulation had been agreed to and would be enforced."

The tenant did not provide any evidence to support his claim that he was assured the upstairs tenants would not wear shoes. In fact, the landlord disagreed with this claim. Further, the landlord argues that the tenant has refused his reasonable attempts to address the tenant's complaints about the tenants upstairs. I find that the landlord has taken all reasonable steps to correct or mitigate the tenants' noise related issue. I accept the testimony of both the landlord and the upstairs neighbours that they have tried their best to accommodate the tenant with no success.

I accept the submissions of the upstairs neighbours and the landlord that the tenant's demands are unreasonable. Attempts have been made to find quiet times for the unit based on the tenant and his wife's schedule. Attempts have been made to reduce the sound through the use of rugs on frequently used areas of the upstairs unit. Attempts have been made to advise the downstairs tenant in advance of a gathering at the upstairs neighbours' house. None of these efforts have satisfied the tenant.

In this case, I find that the landlord's steps were reasonable and rational steps. I find that the landlord met his obligations under the Act. Based on all of the evidence

before me, I find that the tenant has not provided sufficient evidence to meet the burden of proof, on a balance of probabilities that he and his wife were **unreasonably disturbed**.

I do not accept the entirety of the tenant's evidence regarding the level of disturbance. I find that the upstairs neighbours have made efforts to appease the tenant but that he has contributed to the ongoing dispute with unwillingness to compromise. I find that the tenant has not provided evidence of disturbance beyond what is within the realm of the ordinary upstairs/downstairs tenant relationship.

The tenant's sole request at this hearing was to order the upstairs neighbors to not wear shoes in their home and not allow their children or guests to wear shoes in their home. I find that to order the upstairs neighbours to never wear shoes is overly restrictive and the tenant has not proven that this order is necessary as a result of some unreasonable disturbance or some failure of the landlord to respond to his complaints. I dismiss the tenants' request for an order that the landlord comply with the Act on the basis of a loss of quiet enjoyment and, as the tenant has been unsuccessful in his application, I find that the tenant is not entitled to recover the filing fee for this application.

Conclusion

I dismiss the tenant's application in its entirety.

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: February 28, 2018

Residential Tenancy Branch