



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested an Order that the Landlord comply with section 28 of the *Residential Tenancy Act*.

The hearing was conducted by teleconference on May 3, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Tenant entitled to an Order that the Landlord comply with section 28 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant testified as follows. She stated that the tenancy began November 1, 2017. She confirmed that she lives in a two bedroom basement suite in a rental property which includes two upstairs units and one downstairs unit.

The Tenant stated that the nature of her complaint relates to the time the upstairs renter, C.L., gets up in the morning and leaves for work. She testified that C.L. wakes up at 2:45 a.m. and leaves by 3:30 a.m. and returns between 4:30 and 5:30 p.m. She stated that while he makes noise in the evening, it is just "living" and is not problematic; however, his noise at 3:00 a.m. is intolerable.

The Tenant confirmed that she wears earplugs and a second set of headphones in an attempt to block out the noise. The Tenant stated that there is no insulation between the units and her bedroom is located directly below the kitchen.

The Tenant confirmed that she is employed part time as a house-sitter and works in the evenings, or through the morning. She also testified that she has a traumatic brain injury and claimed that she had to increase her anxiety medication and see a psychiatrist because of the noise from upstairs. She did not submit any evidence to support this claim.

The Tenant stated that she would like the Landlord to blow insulation between the floors to minimize sound transference.

The Tenant stated that she has been a property manager for many years, has managed up to 2,000 properties and has never experienced so much "disrespect". The Tenant also stated that she has been looking for another place to live as she claims she cannot stay in the property and has only stayed in the rental unit 12 times since January.

The Tenant provided in evidence digital recordings of the sound which she claims is unreasonably disturbing.

In response to the Tenant's submissions the Landlord, S.K., testified as follows.

The Landlord testified that she has owned the rental property for five years and that for that time all three of the units have been occupied; she also stated that prior to this tenancy, she has not had complaints about the noise transference between the units.

The Landlord confirmed that the tenant above the subject rental unit, C.L., works in the logging industry as a truck driver. She stated that he has lived in the rental property

since June of 2017. She also stated that the other renter, T.L., has been there since they purchased the rental property.

C.L. wrote a letter in support of the Landlord. In that letter he confirmed that he is employed in the logging industry and wakes up at 3:00 a.m. and leaves the rental unit by 3:15 a.m. He also wrote that he returns at 5:30 p.m.

The Landlord stated that she is unaware if there is insulation between the floors. She further stated that the home is heated with gas although she was not aware if there was ducting between the floors.

The Landlord acknowledged that the Tenant has complained about the upstairs renter. She stated that when the Tenant texted her she wrote that because she was awake at 3:00 a.m. the Landlord should also be awake at 3:00 a.m.

The Landlord confirmed that she has spoken to the upstairs renter about the noise complaints from the Tenant. She stated that he claimed that his lunch is already made the night before, he goes to the bathroom and then he leaves for work.

The Landlord confirmed that she was agreeable to hiring an insulation company to provide an estimate as to the cost to insulate between the two units and whether that would be financially feasible and whether it would solve the sound problem. The Landlord further stated that she would obtain information from the company as to the duration of the work and whether the rental unit would need to be vacated. She could not commit to such work as she did not if it would resolve the issues raised by the Tenant, nor did she know whether she could afford it.

The Landlord confirmed that the rental unit has two bedrooms, one of which is under the kitchen. The other bedroom is under the upstairs bedroom.

In response to the Landlord's submissions the Tenant also stated that her son lives in the other bedroom and that at one point in time she tried to stay in the other bedroom but could hear the upstairs renter using the bathroom.

Analysis

In this case, the Tenant alleged that her right to quiet enjoyment was negatively affected as a result of the time the upstairs tenant wakes and leaves for work. During her testimony on May 3, 2018, she stated that she would like the Landlord to install

insulation between the floors; notably, she did not make this specific request on her Application for Dispute Resolution.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads 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.

The Tenant alleges that the Landlord has breached her right to quiet enjoyment because she is unreasonably disturbed by the upstairs tenant.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

“...Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

...

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

...

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

...

After careful consideration of the evidence, and the testimony of the parties, I find the Tenant has failed to prove the Landlord breached section 28. While the upstairs' tenant's hours of work are earlier than most, I accept that he does his best to be as

quiet as possible by making his lunch the day before and minimizing the time he is in his kitchen. I accept the Tenant's evidence that she feels the timing of and sound made by her upstairs neighbour when wakes and leaves for work to be intolerable, however, I note that the Tenant also stated that she is particularly sensitive to sound. Occupants of multi-unit dwellings often hear the sounds of their neighbours and can be disturbed if their neighbours have different work schedules; this is particularly so for tenants in units below others. However, after listening Tenant's audio recordings, I found the level of sound to be normal and not unreasonably disturbing.

I also find that the Landlord has talked to the upstairs tenant and asked him to be quiet. In doing so, I find that she has taken reasonable steps to address the Tenant's concerns.

I therefore dismiss the Tenant's Application for an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulations* or the tenancy agreement as I find the Landlord is in compliance.

Further, I note that the Landlord was prepared to retain an insulation specialist to come to the rental unit and provide her with information and a quote as to possibly insulating the rental unit. Understandably she wishes to obtain information as to whether such insulation would improve the sound proofing between the units, the impact of such work on her tenants and whether she is able to afford such work.

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: May 11, 2018

Residential Tenancy Branch