



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OLC

Introduction

Both parties attended the hearing and gave sworn testimony. The tenant said they served the Application for Dispute Resolution hearing package by registered mail and the landlord acknowledged receipt. I find the documents were served pursuant to section 89 of the Act. The tenant requests pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order that the landlord ensure their privacy and reasonable enjoyment pursuant to section 28.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord has failed to protect their right to peaceful enjoyment contrary to section 28?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions.

It is undisputed that the tenancy commenced in September 2015, rent is \$1050 a month and a security deposit of \$497.50 was paid. The tenant confirmed this is a high rise building and he lives on the 4th floor in a studio apartment. The studios in the building are located between two other units which apparently have their kitchen walls adjoining the walls of the studios. The tenant says one of the neighbours starts her day at 5:30 a.m. (at 4:30a.m. when she is preparing for visitors) and he is very disturbed by the noises of her coffee maker and the slamming of cupboard doors. He said the other neighbour starts about 7:30 a.m. which is not so intrusive to his peace and enjoyment. He said a contractor noticed there was almost no insulation in the walls and he would be prepared to contribute to the cost if the landlord put in more insulation.

The tenant also notes there is excessive light from the lights of the new police station was built across the road. He said the blinds supplied by the landlord did not filter out sufficiently so he put black out drapes on his window and this has helped.

The landlord said the tenant had lived in the building previously, had no issues and chose to move back in. He said the walls are typical of such buildings and are the same as before. They consulted a contractor who said the walls are typical of buildings of this age. No other studio tenants have complained, except one who is adjacent to the laundry and complained of machines being used late at night. The landlord addressed this problem with notices to all tenants regarding laundry hours. He said they spoke to one of the tenant's neighbours about closing her cabinet doors quietly; they have rubber stops also. He said he will speak to the early rising tenant about being quieter in the early morning. They consulted their contractor who told them that more insulation would make no significant difference and would be very costly to install.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

Section 28 of the Act sets out the tenant's right to quiet enjoyment.

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.

Page 6 of the Residential Tenancy Guideline explains further that "inaction by the landlord which permits or allows ...interference by an outside or external force which is within the landlord's power to control" may be a basis for finding of a breach of quiet enjoyment. Examples of such interference include "unreasonable and ongoing noise".

I find insufficient evidence that the landlord to prove the landlord is not protecting the peaceful enjoyment of the tenant. I find they have spoken to his neighbours about noise

and consulted a contractor about insulation. I find they have diligently tried to protect his peaceful enjoyment. I dismiss this complaint of the tenant.

Regarding the complaint about insulation, I find the Act provides:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find the landlord's evidence credible that this building is typical of its age and style. I find insufficient evidence that it does not comply with section 32 of the Act or that it is not suitable for occupation by the tenant. I note he resided in the building prior to 2015 and then returned which supports the landlord's credibility. As the landlord suggested perhaps the tenant's own circumstances or health has changed since that time. I note the tenant stated he suffers from anxiety now and avoids confrontation. It is unfortunate that the tenant finds his current unit is noisy with too much light from the new police station but I find insufficient evidence that the landlord is violating the Act or failing to protect his peaceful enjoyment.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply. His filing fee was waived. 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: July 11, 2018

Residential Tenancy Branch