



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC RP

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
- an order for repairs pursuant to section 33..

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant was represented by his agent who spoke on his behalf (the "tenant"). The corporate landlord was represented by its agent (the "landlord").

As both parties were in attendance service was confirmed. The landlord confirmed receipt of the tenant's application dated July 7, 2018 and evidentiary materials. Based on the undisputed evidence I find that the landlord was served with the tenant's application package in accordance with sections 88 and 89 of the *Act*.

The landlord testified that they believe their evidence was served on the tenant personally by a former employee of the corporate landlord. The tenant disputed receiving the landlord's materials.

I advised the parties that I would only consider those pieces of evidence included in the landlord's package that the tenant confirmed having received on prior occasions. I have taken this approach after considering the guidance provided by Rule 3.17 of the Rules of Procedure.

Issue(s) to be Decided

Is the landlord in breach of the Act, regulation or tenancy agreement by failing to ensure the tenant has quiet enjoyment of the rental unit?

Should the landlord be ordered to make repairs to the rental unit?

Background and Evidence

The parties agree on the following facts. This periodic tenancy began in September, 2014. The current monthly rent is \$975.00 payable on the first of each month.

The rental unit is in a multi-unit building containing 70 units. The building is approximately 50 years old. The landlord described the building as a wood-framed walk-up. There is a unit above the rental unit.

The tenant testified that they hear the noises from their upstairs neighbor and have complained to the landlord on multiple occasions. The tenant said that the neighbors are not excessively noisy but they are able to hear all of the activities due to the age of the building and the inadequate soundproofing between floors. The tenant said they are able to hear sounds of walking, cooking appliances being used and general movement in the upstairs unit. The tenant submitted into evidence video recordings they have taken of the noises they experience.

The tenant testified that they do not believe that the level or frequency of noise created by their upstairs neighbor to be excessive. The tenant instead believes that the condition of the rental building is such that sound permeates excessively. The tenant submits that the landlord is in breach of the Act by failing to maintain and repair the rental building to ensure the tenant's quiet enjoyment. The tenant seeks an order that the landlord comply and perform repairs to the shared floors and ceiling to better soundproof the units.

The landlord testified that they have investigated the noise complaints but have found no structural issues with the building or in the upstairs suite. The landlord said that the noises appear to simply be the usual noise of activities that one would expect from an older multi-unit building. The landlord said that nevertheless, they issued warning letters to the upstairs unit in August, 2018 making them aware of the complaints from the tenant.

Analysis

The Act sets out at section 28 that a tenant has the right to quiet enjoyment of their rental unit as follows:

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 landlord has testified that they have issued warning letters to the neighbors as well as conducting inspections to determine that there are no structural issues with the building that cause noise to be conducted beyond that which would be expected.

While I accept the evidence of the tenant that they feel that they hear the noises created by their neighbors, I find there is insufficient evidence that the landlord has breached the Act, regulations or tenancy agreement. Residing in a multi-unit rental building naturally means that one may hear the ambient sounds from neighbors. It is reasonable that in a half-century old wood-framed building sounds will travel from suite to suite. I find that the tenant has not shown that the level of noise is beyond that which one would reasonably expect in a building of this age and character. I further find that there is insufficient evidence that any repairs are necessary. The fact that a building is older and conducts sounds is not evidence that repairs or upgrades are necessary. Accordingly, I dismiss the tenant's application.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: September 6, 2018

Residential Tenancy Branch