Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OLC, PSF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act*) or the tenancy agreement and for an Order requiring the Landlord to provide services or facilities. At the hearing the Tenant stated that she did not intend to apply for an Order requiring the Landlord to provide services or facilities. As the Tenant did not intend to apply for an Order requiring the Landlord to provide services or facilities, that matter will not be considered at these proceedings.

The Tenant stated that on September 17, 2018 the Dispute Resolution Package was sent to the Landlord, via registered mail. The Property Manager stated that these documents were received by the Landlord on September 18, 2018.

The Tenant submitted evidence to the Residential Tenancy Branch on September 10, 2018, September 18, 2018, and September 30, 2018, some of which she appears to have uploaded using the Landlord's dispute access code . She stated that all of her evidence was served to the Landlord with the Application for Dispute Resolution.

The Property Manager stated that he did not receive all of the documents submitted in evidence by the Tenant. The Tenant's evidence was reviewed with the Property Manager and the evidence he acknowledged receiving was accepted as evidence for these proceedings.

The Tenant submitted 22 pages of emails to the Residential Tenancy Branch. The Property Manager acknowledged receiving 6 pages of emails from the Tenant. As these emails relate to conversations between the Tenant and the Property Manager

regarding the Tenant's complaints, which are not in dispute, I find that are not particularly relevant to this decision. I therefore concluded that it was not necessary to adjourn the matter to provide the Tenant with the opportunity to re-serve the Landlord with the emails the Property Manager did not acknowledge receiving.

The Tenant submitted an audio recording of a conversation she had with the Caretaker. She stated that this was a conversation they had regarding the noise the Caretaker's grandchild was making, in which the Caretaker told her that the Tenant needed to move out of the rental unit.

The Tenant stated that this recording was sent to the Property Manager, via email, on September 17, 2018. The Property Manager stated that he did not receive this audio recording.

Section 88 of the *Act* outlines the various ways in which evidence can be served to the other party. Section 88 of the *Act* does not authorize parties to serve documents via email.

As the Property Manager does not acknowledge receiving this recording and it was not served in accordance with section 88 of the *Act*, it was not accepted as evidence for these proceedings.

The Property Manager stated that the Landlord did not submit any evidence to the Residential Tenancy Branch.

Preliminary Matter #1

At the hearing the Tenant stated that she would like financial compensation if she has to move out of the rental unit. The Tenant was advised that she did not apply for financial compensation in her Application for Dispute Resolution and that I could not, therefore, determine whether she was entitled to such compensation.

Preliminary Matter #2

At the conclusion of the hearing the parties were given an opportunity to raise issues that had not been discussed during the hearing. At this point the Tenant repeatedly raised issues that had already been discussed during the hearing. As the Tenant did

not raise any issues that had not been previously discussed, I am satisfied that the Tenant had a full opportunity to present relevant evidence.

Issue(s) to be Decided:

Is there a need to issue an Order requiring the Landlord to comply with the *Act* or the tenancy agreement?

Background and Evidence:

The Tenant is seeking an Order that requires the Landlord to comply with her right to the quiet enjoyment of the rental unit. Specifically, she is seeking an Order that prevents the Caretaker's grandson from disturbing her and an Order that prevents the Caretaker or an agent for the Landlord from threatening to evict her.

The Tenant stated that:

- since December of 2017 she has frequently been disturbed by the Caretaker's grandchild;
- the Caretaker lives in the suite next to her;
- the suite has hard flooring:
- she can hear the Caretaker's grandson running in the suite, due to the hard flooring;
- she has been disturbed by the noise the child makes since December of 2017;
- she is disturbed by the child 3 or 4 times per week;
- the disturbances occur during the day and up to 9:30 or 10:00 p.m.;
- she reported her concerns to the child's mother on August 27, 2018, who did nothing to reduce the noise;
- the child's mother does not live in the neighboring suite, although she was staying there for a period of time while the Caretaker was away;
- after she spoke with the child's mother on August 27, 2018 she banged on the wall once or twice to indicate the noise was bothering her;
- after she banged on the wall the occupants of the neighboring suite banged several times on the wall;
- after August 27, 2018 the Caretaker's daughter told her she should move and that the Caretaker might evict her;
- she sent several emails to the Property Manager, in which she informed him of the disturbances;
- in those emails she initially asked the Property Manager not to intervene and she subsequently asked him to intervene;

- she contacted the police, who would not assist due to age of the child causing the disturbances;
- the Caretaker was away on August 27, 2018;
- on September 18, 2018 she spoke with the Caretaker who told her that she should move out if the noise was bothering her and that she wanted the Tenant to move out;
- she has been told at least three times to move out;
- the Caretaker did not tell her she would try to reduce the noise made by her grandchild;
- the disturbances have been less frequent since the Caretaker returned from her holiday;
- the disturbances have affected her mental health; and
- she thinks the grandchild should not be allowed to visit in the Caretaker's suite.

The Caretaker stated that:

- her grandchild is three years old;
- the Tenant was complaining about the noise from her grandchild crying even when he was a baby;
- her grandchild frequently stays with her on Fridays, Saturdays, and Sundays;
- he does not typically run in her suite, but you can hear him playing and moving around due to the nature of the flooring;
- he goes to bed between 9:00 and 9:30 p.m.;
- when she returned from her travels on September 17, 2018 her daughter told her that the Tenant had complained about the noise;
- she spoke with the Tenant on September 18, 2018 and told the Tenant she should consider moving if the noise was bothering her;
- she thinks that area rugs might help to reduce the noise levels;
- she will put two area rugs in her suite;
- she will do her best to reduce the noise her grandchild makes; and
- she will not continue to suggest that the Tenant move from the rental unit, unless she serves her with a written notice to end tenancy.

The Property Manager stated that:

- he received a series of emails from the Tenant regarding the noise;
- in the emails the Tenant initially asked him not to intervene and then she asked him to intervene;
- he suggested that she speak with the Caretaker when she returned;

- the Caretaker will do her best to reduce the noise disturbances;
- the occupants living on the other side of the Caretaker have told him that the grandchild does not make an unreasonable amount of noise; and
- the Landlord will serve written notice to end the tenancy if the Landlord wants the tenancy to end.

Analysis:

The matter to be determined at these proceedings is not whether the Landlord has responded appropriately to the disturbances reported by the Tenant, as these proceedings do not relate to an application for compensation for those disturbances. Rather, the issue to be determined at these proceedings is whether there is a need to issue an Order requiring the Landlord to comply the *Act* or the tenancy agreement. Specifically, whether there is a need to issue an Order that protects the Tenant's right to the quiet enjoyment of the rental unit.

Section 28 of the *Act* grants a tenant the right to quiet enjoyment including, but not limited to, reasonable privacy; freedom from unreasonable disturbance; 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]; and use of common areas for reasonable and lawful purposes, free from significant interference. In some circumstances I would conclude that unreasonable and ongoing noise is a breach of the covenant of quiet enjoyment.

Black's Law Dictionary, sixth edition, defines reasonable as fair, proper, just, moderate, suitable under the circumstances while unreasonable is defined as irrational; foolish; unwise; absurd; silly; preposterous; senseless; stupid.

On the basis of the Tenant's testimony, I find that she has been frequently disturbed by the sounds of a young child moving about in the Caretaker's suite, which is adjacent to the Tenant's rental suite. I find that the Tenant has submitted insufficient evidence to establish that the sounds made by the young child are unreasonable.

In concluding that the Tenant has submitted insufficient evidence to establish that the sounds made by the young child are unreasonable I was influenced, in part, by the absence of evidence that corroborates the Tenant's testimony that the noises are caused by the child running or that refutes the Caretaker's testimony that the child does not run frequently and is simply playing and moving around the suite.

In concluding that the Tenant has submitted insufficient evidence to establish that the sounds made by the young child are unreasonable I was influenced, in part, by the undisputed evidence that the child is not typically awake past 10:00 p.m.

In concluding that the Tenant has submitted insufficient evidence to establish that the sounds made by the young child are unreasonable I was influenced, in part, by the absence of evidence to show that the noises the child makes are disturbing the occupant who lives on the other side of the Caretaker.

In concluding that the Tenant has submitted insufficient evidence to establish that the sounds made by the young child are unreasonable I was influenced, in part, by the absence of evidence, such as an audio recording, that allows me to conclude that the noises the child makes are unreasonable.

In the absence of evidence that establishes the child makes any more noise than a typical child of that age, I cannot conclude that the noise he makes is unreasonable. I find that it cannot be considered unreasonable for a child to play in his grandmother's home within acceptable hours of the day. While I accept it is disturbing the Tenant, this is an inconvenience that is typically associated with living in a multi-unit residential complex. I find that the Tenant's request that the child should not be able to visit in the Caretaker's suite is unreasonable.

As the Tenant has submitted insufficient evidence to establish that the sounds made by the young child are unreasonable, I cannot conclude that the sounds of the Caretaker's child is breaching the Tenant's right to the quiet enjoyment of her rental unit. I therefore find it is not necessary to issue an Order requiring the Landlord to comply with the *Act* in regards to section 28 of the *Act.*

As the Caretaker agreed, during the hearing, to use two area rugs in her suite in an attempt to reduce the noise levels, I hereby Order the Caretaker to use two area rugs in her suite.

On the basis of the undisputed evidence I find that it has been suggested to the Tenant that she should move if she is being disturbed by the noise generated by the Caretaker's grandchild and that the Tenant felt threatened by this communication. Rather than being a threat, I find that this is a viable solution that is available to the Tenant if she continues to be disturbed by the child.

Sections 46, 47, 48, and 49 of the *Act* authorize a landlord to end a tenancy by

providing a tenant with written notice to end the tenancy. To provide clarity to this tenancy the parties are advised that the Landlord must provide the Tenant with written notice to end the tenancy if the Landlord wishes to end the tenancy. In these circumstances I find it would be unreasonable to Order the Landlord to not discuss ending the tenancy with the Tenant, however I encourage the Landlord to do so in a respectful manner.

To provide stability to this tenancy, I further encourage the parties to communicate with each other in a respectful manner at all times. This would include not communicating with each other by banging on the walls.

Conclusion:

I Order the Caretaker to use two area rugs in her suite, as she promised to do at the hearing.

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: October 29, 2018

Residential Tenancy Branch