Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NANAIMO AFFORDABLE HOUSING SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

This dispute resolution proceeding was initiated by the tenant, who filed an application for dispute resolution on January 15, 2019, against the landlord. The tenant argues that the landlord is in breach of section 28 of the *Residential Tenancy Act* (the "Act") and seeks an order under section 62(3) that the landlord comply with the Act.

A dispute resolution hearing was convened on February 26, 2019 and the landlord's agent and the tenant attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues regarding the service of documents.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, and to which I was referred, only evidence relevant to the issue of this application is considered in my decision.

Issue to be Decided

The issue that I must decide is this: is the tenant is entitled to an order under section 62(3) of the Act that the landlord comply with the Act?

Background and Evidence

The tenant's rental unit is located on the ground floor of a multi-unit apartment building, and next to the building's lobby. In the lobby, frequently, are a group of women (the "group") who make lots of loud noise and disturb the tenant's quiet enjoyment. The tenant argued that the group not only causes a disturbance, but that they knowingly do so because the group is aware of how loud they are. The group have not only been loud, they have engaged in name calling. This all started a couple of months ago.

The group has not only engaged in name calling, but they have spread gossip to the effect that the tenant had “bullied the bread lady.” The bread lady is someone who volunteers for a church and delivers bread to the building. The tenant testified that there have been “quite a few” instances of this behavior, as least ten to twelve times. The group seems to meet on Saturday late mornings, sometimes sitting and visiting for up to four hours. It is about 10-12 feet between where the group sits and the tenant’s front door.

The tenant has brought up the issue with the landlord, who has made efforts to install a seal to the tenant’s front door to reduce the noise from the lobby. The tenant also seeks additional assistance from the landlord in addressing this issue and stated that she would “like it so guests go visit their friends” in their friends’ rental units, and not in the lobby. The tenant’s request was also outlined in a letter dated January 11, 2019, addressed to the Residential Tenancy Branch and submitted into evidence. Also submitted into evidence is correspondence by the tenant referring to incidents by the group occurring on January 12, 19, 27 and February 2, 2019.

The tenant met with the landlord’s agent and another tenant to resolve matter, which temporarily solved the problem by having the group meet on the fourth floor, in a library-like area. Unfortunately, the group was made to leave by tenants on that floor who did not want to listen to the group’s noise and laughter.

The landlord’s agent testified that the lobby is for all tenants. She referred me to a Residential Tenancy Policy Guideline regarding this. She explained that the landlord took over operations in September 2018 and that, in the past groups of people would meet in the lobby. In terms of people being able to use the lobby, the agent explained that it is “imperative for seniors to interact with each other.” There is a Wednesday-morning coffee chat where residents gather to socialize. The is conducive to this socializing and gathering, as there are two big chairs and a leather couch.

The landlord’s agent explained that the landlord’s office is located next to the lobby, much like the tenant’s rental unit. A recording of the group’s conversation was made, from the office, on December 28, 2018, and submitted into evidence. The agent argued that this video establishes that the conversation does not rise to the level of interference that the tenant is suggesting.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this case, the tenant claims that the landlord is in breach of sections 28(a), (b) and (d) of the Act, which read as follows:

> A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
> (a) reasonable privacy;
> (b) freedom from unreasonable disturbance;
> [. . .]
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant argues that she has suffered a loss to quiet enjoyment under the above-noted section of the Act, and that the landlord must take steps to address this issue, made possible through my issuing of an order under section 62 of the Act.

As per *Residential Tenancy Policy Guideline 6* (“Entitlement to Quiet Enjoyment”), a landlord is obligated to ensure that a tenant’s entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises.
A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

In this case, the group's behavior clearly causes both an unreasonable disturbance and significant interference. While any tenant who chooses to live next to a lobby must accept some higher-than-normal amount of noise from the comings and doings of residents, visitors, and a bread lady, the tenant should not have to withstand the constant onslaught of unacceptably loud noise—and being called a "bitch"—coming from a group of people gathered in the lobby. This group, by all accounts as described by the tenant, appears to have little regard for others, including both the tenant and the other occupants on the fourth floor, from which the group was "pushed off."

I note that the landlord's agent did not refute the tenant's evidence that the group behaves in this manner. And, while a recording of one of the group's conversation may be an example of a time when the group was talking in a non-disturbing manner, it does not prove that the group has not behaved as alleged on other occasions.

Indeed, that the agent (1) met with two of the group's tenants to find another place to meet, (2) asked the group to meet on the fourth floor, (3) suggested that the group leave the building and meet at the coffee shop down the street, (4) "attempted to solve the situation," and, most notably, (5) agreed to install a seal around the tenant's door, all strongly suggest that there is indeed a problem with this group. Such efforts are consistent with the tenant's argument and submissions in respect of how the group unreasonably disturbs the tenant, and, how the tenant is unable to use the common area free from significant interference.

Given the above, I find that the tenant's rights to freedom from unreasonable disturbance, and use of common areas for a reasonable and lawful purposes, free from significant interference under section 28 of the Act, have been infringed upon by the failure of the landlord to address the group's activities.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving that they are entitled to an order against the landlord, pursuant to section 62 of the Act.

Conclusion

I order that the landlord comply with section 28 of the Act, and, that it take all reasonable steps to ensure that the tenant's right to quiet enjoyment is upheld.

If all reasonable steps taken do not address this matter, the tenant is at liberty to apply for dispute resolution seeking compensation for loss of quiet enjoyment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: February 26, 2019

Residential Tenancy Branch