



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GWG HOLDINGS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, RR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:10 am in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 am. The tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

The tenants testified that the landlord was served the notice of dispute resolution form and supporting evidence via registered mail on January 18, 2019. The Canada Post registered mail tracking number is recorded on the cover of this decision. I find that the landlord was deemed served with this package on January 23, 2019, five days after the tenants mailed it, in accordance with sections 89 and 90 of the Act.

Issues to be Decided

Are the tenants entitled to:

- an order to the landlord to make repairs to the rental unit;

- the cancellation of the Notice; and
- reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenants, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claim and my findings are set out below.

The parties entered into a one-year fixed-term tenancy agreement starting March 1, 2017 for the rental of a one-bedroom basement suite of a single-detached home which is divided into four rental suites (the "**Rental Unit**"). The tenancy has subsequently converted to a month to month tenancy by operation of section 44 of the Act. Monthly rent is \$695.00. Use of a shared laundry room was included in the rent. The tenants paid the landlord a security deposit of \$347.50. The landlord continues to hold it. The tenants continue to reside at the Rental Unit.

Prior to entering into the tenancy agreement, the tenants testified that the landlord told them that the Rental Unit was quiet, and that the ceilings had been soundproofed.

The Notice

On January 7, 2019, the landlord served the tenants the Notice, with an effective date of February 28, 2019, by placing it in their mailbox.

The grounds to end the tenancy cited in the Notice were:

- 1) the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- 2) the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

The landlord wrote on the Notice that "tenants have turned off power to upper unit, utter threats".

The tenants denied that they had engaged in the conduct described on the Notice.

Emergency Repairs

The tenants are seeking an order that the landlord make the following repairs:

- 1) fix a leaking bathtub faucet;
- 2) fix a leaking washing machine; and
- 3) sound proof the ceiling of the Rental Unit's bedroom.

The tenants testified that the bathtub faucet leaks into the bathtub, which creates an unwanted sound and wastes water which, the tenants testified, concerns them as they are environmentally conscious. The tenants testified that they have asked the landlord's maintenance man to fix the faucet on multiple occasions, but that he has yet to do so.

The tenants testified that the water drainage hose from the washing machine has repeatedly disconnected from the washing machine when it is in use, causing water to leak on the floor of the shared laundry room. On one occasion, the water seeped under the dividing wall between the shared laundry room and the Rental Unit. The tenants testify that they attempted to temporarily affix the hose with duct tape, but that this solution was unsuccessful. They testified that they have advised the landlord's maintenance man of the issue in late December 2018, but no action has been taken to fix the issue.

The tenants testified that they use the washing machine as infrequently as possible, and only wash small loads of laundry when they do, so as to try to prevent the hose from becoming disconnected.

Additionally, the tenants testified that the casing of the washing machine is loose, and that the machine operates at a loud volume as a result.

Finally, the tenants testified that prior to moving into the Rental Unit, they were advised that the ceiling on the Rental Unit had been insulated so as to dampen noise. They further testified that, contrary to this, the ceiling of their bedroom is not insulated, and that this lack of insulation coupled with the upstairs tenant's child making frequent loud noises throughout the night, "screaming at the top of his lungs" and "throwing toys", causing their bedroom to be unusable at night. They testified that they have had to move their bed into the living room (the ceiling of which, they testified, is insulated) in order to be able to sleep, as the problem is ongoing. They testified that they can only use their bedroom for storage as a result of the ongoing noise.

The tenants testified that they advised the landlord of the noise problems, but the landlord denied that there was excessive noise, citing that he had never before received

a noise complaint about the upstairs unit. The tenants testified that they have spoken to the upstairs tenant on a number of occasions about the noise problem, but that the noise issue persists.

Analysis

Cancelling the Notice

Based on the testimony of the tenants, and the Notice before me, I find that the tenants were properly served with the Notice.

Pursuant to Rule of Procedure 6.6, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. If the landlord cannot prove this, then the Notice is cancelled.

Rule of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Given the nature of the relief sought, I elected to conduct the hearing in the landlord's absence. As the landlord did not attend this hearing, I find that the landlord failed to prove the claims made on the Notice. Accordingly, I order that the Notice is cancelled.

Repairs

Section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

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 that the noise caused by the leaking bathtub faucet causes the Rental Unit not to be suitable for occupation by the tenants, as it is a breach of entitlement to quiet enjoyment (per section 28 of the Act).

I likewise find that the leaking washing machine causes the Rental Unit not to be suitable for the occupation of the tenants, as it is not reasonable for water to leak under the wall of the Rental Unit. The tenants are entitled to live a Rental Unit that is free from such leaks.

Accordingly, I order the landlord to do everything that is necessary to repair the leaking bathtub faucet and the washing machine hose by April 15, 2018.

I do not find that the section 32 extends to the landlord the obligation of soundproofing or insulating a room that was not previously insulated. A lack of insulation is not a problem that is to be repaired; rather I find that it is an upgrade to be made. There is no existing insulation in the Rental Unit that has become damaged that needs to be replaced. Instead, the tenant is seeking an order that the landlord install new insulation. I find that this is not something that can be awarded pursuant to section 32 of the Act.

Accordingly, I decline to order that the landlord install insulation in the Rental Unit bedroom ceiling.

Reduction in Rent

The tenants have sought a rent reduction of 50% due to the bedroom being unusable due to a lack of noise insulation.

Section 65 of the Act states:

Director's orders: breach of Act, regulations or tenancy agreement

65(1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders: [...]

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

I accept the tenants' testimony that prior to their agreeing to rent the Rental Unit, the landlord advised them that the bedroom ceiling was insulated. Based on the testimony of the tenants, I find that the bedroom ceiling was not insulated. I accept the tenants' testimony that the ceiling of the living room is insulated, while the bedroom ceiling is not.

Section 28 of the Act entitles the tenants to the quiet enjoyment of the Rental Unit, which includes freedom from unreasonable disturbance. Policy Guideline 6 discusses this section in some detail:

A landlord is obligated to ensure that the 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.

[...]

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.

I find that the noise coming from the upstairs unit was both frequent and unreasonable. I find that the landlord failed to ensure that the tenants' quiet enjoyment was protected. I accept the tenants' evidence that they complained to the landlord about the noise, and that he denied there was a problem.

Accordingly, I find that the landlord has breached section 28 of the Act by failing to provide the tenants with the quiet enjoyment they are entitled to. Additionally, I find that as the landlord knew about the problem and failed to take reasonable steps to correct it, per Policy Guideline 6, the landlord is responsible for the damage suffered by the tenants as the result of their loss of quiet enjoyment.

The noise caused by the upstairs tenant has deprived the tenants of the ability to use the bedroom for its designated purpose (sleeping). Rather, it can only be used for storage.

I find that the tenants are entitled to compensation in the form a reduction in their monthly rent, pursuant to section 65 of the Act. I do not find a 50% reduction to be appropriate. The tenants have not been deprived of the use of half the Rental Unit. They can still use the living room, kitchen, bathroom, and laundry room. Additionally, they are able to make use of the bedroom as storage.

I find that a reduction of 25% of the monthly rent (\$173.75) is appropriate in the circumstances. This reduction shall remain in place until such time as the landlord installs soundproofing on the bedroom ceiling. I order that the tenants do everything that is reasonably necessary to allow the landlord to install the soundproofing.

Conclusion

I cancel the Notice issued pursuant to section 47 of the Act. The tenancy shall continue.

Pursuant to sections 32 and 62 of the Act, I order the landlord to do everything that is necessary to repair the leaking bathtub faucet and the washing machine hose by April 15, 2019.

Pursuant to section 65 of the Act, I order that the tenants' monthly rent of \$695.00 is reduced by \$173.75, for a new monthly amount of \$521.25, until such time as the landlord installs soundproofing on the bedroom ceiling.

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: March 12, 2019

Residential Tenancy Branch