



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

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

- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Issue(s) to be Decided

The tenant BP ("tenant") and the landlord attended the hearing. The landlord confirmed he received the tenant's notice of hearing package and evidence; the tenant confirmed receipt of the landlord's evidence. Based on their testimonies I find each party was served with the respective materials in accordance with section 88 of the *Act*. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is referenced in this decision.

Background and Evidence

The tenant testified that the fixed one year tenancy began on August 15, 2018. Rent is set at \$1,650.00 per month, due on the 1st of the month, with a security deposit of \$825.00 and a key fob deposit of \$150.00 exchanged between the parties.

In November of 2018, construction of a 24-hour gym facility in the lower commercial space of the building began.

Since the gym opened, the tenant has been experiencing noise from dropped weights. The tenant's rental unit is not located directly above the gym, however he still experiences frequent interruptions of sleep from the noise. The tenant testified he is not bothered by the sound of the weights during the day; however, since the gym operates

throughout the night, he is frequently awakened by the noise. The tenant would like the landlord to provide him with a peaceful living space, free from the noise of the gym.

The landlord testified that at the end of December 2018, when he was advised that the gym clients were causing noise, he spoke to the gym proprietor. The gym proprietor asked the landlord for dates and times when the noise was occurring, so they could review the video and address it.

After receiving more complaints, the landlord sent a letter to the gym on January 7, 2019 advising that several complaints have been made and asking for cooperation and consideration of neighbouring residents in the building. Specifically, the letter asks the gym to take every necessary step to mitigate noise, especially after day-time hours. The gym responded with a letter on January 9, 2019 advising that the following steps were being taken by them to minimize noise levels:

1. Signage within the facility that is clearly visible & advising members to minimize noise levels.
2. Video surveillance review of after-hours members.
3. Review noise reducing options for dead lift areas.

The landlord sent another letter to the gym on February 21, 2019 advising of excessive noise emanating from the gym during late hours of the night, especially between the hours of 3:00 a.m. and 5:00 a.m. Copies of the three letters were provided as evidence by the landlord.

In response, the gym hired sound testing engineers to go inside three of the residential units on March 1st to analyze the noise complaints. The landlord is awaiting the report from the engineer so that he and the gym proprietor can develop a remedy to the noise complaints.

Analysis

Residential Tenancy Policy Guideline PG-6 [Entitlement to Quiet Enjoyment] provides guidance and directions to landlords and tenants on the issue of quiet enjoyment.

Part A of the guideline points out the legislative framework for the tenant's right to quiet enjoyment:

Under section 28 of the *Act* a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and

- use of common areas for reasonable and lawful purposes, free from significant interference.

Part B of the Guideline addresses a breach of quiet enjoyment:

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.

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.* (emphasis added)**

The landlord is obligated to ensure he takes reasonable steps to correct situations where the tenant's right to peaceful enjoyment has been breached. In this case, I find the landlord has done so. The letters dated January 7, 2019 and February 21, 2019 are both indicative of the landlord's efforts to provide the tenant with the quiet enjoyment he seeks. I find the ongoing steps being taken by the landlord, including the coordination of sound testing by engineers on March 1st further indicates the landlord's willingness to take the reasonable steps required to make the rental unit quiet for the tenant.

Both the tenant and the landlord acknowledge an ongoing issue of noise from the gym; however, from the evidence, the landlord is complying with section 28 of the *Act* by working with the gym to remedy the noise problem.

Conclusion

The tenant's application is dismissed.

If in the future the noise problem continues, the tenant is at liberty to file a new application for dispute resolution.

As the tenant was not successful in his claim, the tenant is not entitled to recover the \$100.00 filing fee for the cost of this application.

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 18, 2019

Residential Tenancy Branch